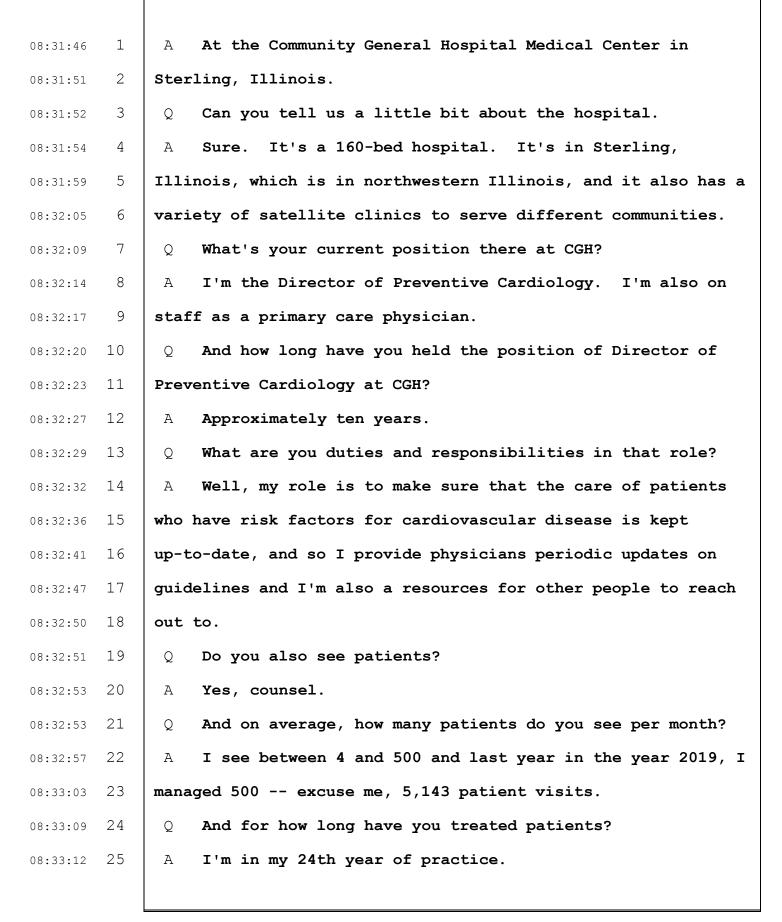
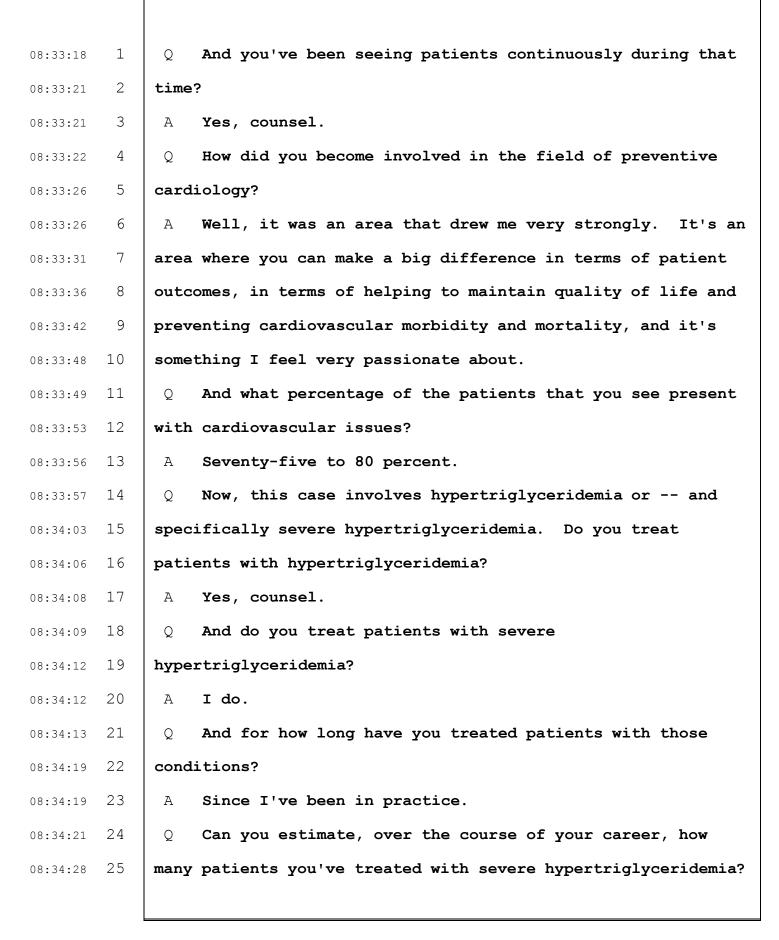
	1		TATES DISTRICT COURT
	2		TRICT OF NEVADA BLE MIRANDA DU, DISTRICT JUDGE
	3		000
	4	AMARIN PHARMA, INC., and	
	_	AMARIN PHARMACEUTICALS	:
	5	IRELAND LIMITED,	: : No. 2:16-cv-02525-MMD-NJK
	6	Plaintiffs,	: : January 27, 2020
	7	-vs-	: Reno, Nevada
	8	HIKMA PHARMACEUTICALS US	A :
	9	INC., et al.,	: Volume 6 :
	10	Defendants.	: :
	11		
	12	mp a NCC	DIDM OF BENOU MDIAI
		TRANSCI	RIPT OF BENCH TRIAL
	13	APPEARANCES:	
	14	FOR THE PLAINTIFFS:	MEAGAN P. KEANE, CHRISTOPHER N. SIPES, MICHAEL KENNEDY, JEFFREY
	15		ELIKAN, JOSEPH KENNEDY, ELAINA M.
	16		WHITT, BARBARA KURYS, HAN PARK, DANIEL J. FARNOLY and ERIC R.
	17		SONNENSCHEIN Attorneys at Law,
	18		Washington, D.C.
08:37:23	19	FOR DEFENDANT HIKMA:	CHARLES B. KLEIN and CLAIRE A. FUNDAKOWSKI,
	20		Attorneys at Law Washington, D.C.
	21		
	22	Reported by:	Kathyrn M. French, CCR #392, RPR
	23		Official Reporter US District Court
	24		Reno, Nevada
	25	(Appearances continue on	next page.)

08:06:14	1	RENO, NEVADA, MONDAY, JANUARY 27, 2020, 8:30 A.M.
08:06:23	2	000
08:06:27	3	
08:30:01	4	THE COURT: Good morning, please be seated.
08:30:10	5	Good morning, counsel. You ready to proceed
08:30:19	6	with plaintiffs' next witness?
08:30:20	7	MR. ELIKAN: Yes, Your Honor. This is Jeffrey
08:30:23	8	Elikan on behalf of Amarin, and we call Dr. Peter Toth.
08:30:23 08:30:23	9	PETER PAUL TOTH, M.D.,
08:30:23 08:30:44	10	called as a witness on behalf of the Plaintiffs, was sworn and testified as follows:
08:30:44	11	THE CLERK: Please be seated.
08:30:45	12	Please state your full name and spell your last
08:30:49	13	name.
08:30:55	14	THE WITNESS: My full name is Peter Paul Toth,
08:31:03	15	T-o-t-h.
08:31:05	16	THE CLERK: Thank you.
08:31:34	17	MR. ELIKAN: May I proceed, Your Honor?
08:31:35	18	THE COURT: Yes.
08:31:35	19	DIRECT EXAMINATION
08:31:35	20	BY MR. ELIKAN:
08:31:39	21	Q Good morning. Could you state your name for the record.
08:31:41	22	A Peter Paul Toth.
08:31:43	23	Q Are you currently employed?
08:31:44	24	A Yes, sir.
08:31:45	25	Q And where are you employed?





08:34:33	1	A It would be in the hundreds.
08:34:37	2	Q I want to talk more about your qualifications now.
08:34:40	3	Can you please
08:34:42	4	MR. ELIKAN: Can we please turn to PX 1172. And
08:34:45	5	Dr. Toth it's in your binder I'll be showing you things on the
08:34:50	6	screen as well.
08:34:51	7	THE WITNESS: Thank you.
08:34:51	8	BY MR. ELIKAN:
08:34:51	9	Q Do you recognize this document?
08:34:52	10	A Yes, sir, it's my curriculum vitae.
08:34:56	11	Q Does it accurately set forth your education, training,
08:34:59	12	and experience?
08:35:00	13	A Yes.
08:35:02	14	MR. ELIKAN: Your Honor, we move for admission
08:35:05	15	PX 1172.
08:35:06	16	MR. KLEIN: No objection.
08:35:06	17	THE COURT: PX 1172 is admitted.
08:35:06	18	(Plaintiffs' Exhibit 1172 received in
08:35:06 08:35:12	19	evidence.) BY MR. ELIKAN:
08:35:12	20	Q In addition to your CV have you had the opportunity to
08:35:15	21	assist in preparing the slides that illustrate aspects of your
08:35:15	22	professional background as well as other testimony you'll be
08:35:23	23	offering today?
08:35:23	24	A Yes, counsel.
08:35:24	25	Q In addition to your position at CGH medical center do you

08:35:30	1	hold any positions in medical schools?
08:35:32	2	A Yes.
08:35:33	3	MR. ELIKAN: Can we have PDX 6-2, Mr. Brooks.
08:35:39	4	BY MR. ELIKAN:
08:35:39	5	Q What are those positions?
08:35:40	6	A I am a professor of clinical family and community
08:35:44	7	medicine in the department of family and community medicine at
08:35:48	8	the University Illinois School of Medicine in Peoria,
08:35:52	9	Illinois.
08:35:52	10	I am also a professor of clinical medicine in the
08:35:52	11	Department of Medicine, Division of Cardiology Michigan State
08:35:58	12	University, College of Osteopathic Medicine, in East Lansing,
08:36:00	13	Michigan.
08:36:01	14	And I'm also an adjunct associate professor of
08:36:05	15	Medicine in the Department of Medicine, Division of Cardiology
08:36:10	16	at the Ciccarone, and I'll spell that for the court reporter,
08:36:15	17	C-i-c-c-a-r-o-n-e, Center for the Prevention of Cardiovascular
08:36:17	18	Disease at the Johns Hopkins University School of Medicine in
08:36:22	19	Baltimore, Maryland.
08:36:23	20	Q Can you briefly describe your role or your position as a
08:36:28	21	professor of clinical family and community medicine at
08:36:33	22	Michigan State.
08:36:34	23	A At Michigan State University
08:36:36	24	Q I'm sorry at the University of Illinois School of
08:36:39	25	Medicine.

It is my role to teach medical students. Medical 08:36:40 1 2 students come to my clinic and shadow me and I instruct them 08:36:45 3 about how primary care medicine works. They are also 08:36:48 introduced not preventive cardiology. And so medical students 08:36:52 4 shadow me, meaning they're with me for weeks at a time. 08:36:59 5 And at Michigan State, what do you do there? 6 08:37:02 7 I participate in continuing medical education, and 08:37:05 08:37:11 8 I have also been asked to co develop a new textbook on 9 cardiovascular pathophysiology with the division chief of 08:37:16 cardiology. 10 08:37:21 11 And can you briefly describe your position at Johns 08:37:22 Q 12 Hopkins. 08:37:28 08:37:28 13 Α Yes. It's a collaborative position where we engage in a 08:37:33 14 great deal of research and part of my role in addition to 15 performing research is to also mentor medical students and 08:37:37 16 cardiology fellows in being able to synthesize data, prepare 08:37:42 08:37:46 17 manuscripts, submit them to journals, attend conferences and I 18 mentor them in performing that type of research, clinical 08:37:51 19 research. 08:37:55 And are your roles at Hopkins and at Michigan State 08:37:55 20 focused on cardiovascular prevention issues? 21 08:38:06 08:38:06 2.2 Α Yes. 23 I want to talk a little bit with your involvement in 08:38:06 24 professional organizations now. Have you held leadership 08:38:12 08:38:14 25 positions in any professional organizations?

08:38:19	1	A Yes, counsel.
08:38:19	2	$\mathbb Q$ I want to look at page 1 of your CV. At number four.
08:38:20	3	It states that you're president elect American
08:38:25	4	Society of Preventive Cardiology 2018 to 2020.
08:38:30	5	What is the American Society of Preventive
08:38:33	6	Cardiology?
08:38:33	7	A The American Society of Preventive Cardiology is an
08:38:38	8	association of healthcare professionals who are committed to
08:38:42	9	preventive cardiology.
08:38:43	10	Q About how many members are there?
08:38:46	11	A I believe about 2000.
08:38:49	12	Q And moving an item down I see that you're listed as
08:38:54	13	past president National Lipid Association, 2013, 2014. What
08:39:00	14	is the National Lipid Association?
08:39:02	15	A The National Lipid Association is an association of
08:39:09	16	healthcare professionals who are committed to the treatment of
08:39:11	17	dyslipidemia.
08:39:14	18	Q Then looking at item 7, past president American Board of
08:39:18	19	Clinical Lipidology, what is the American Board of Clinical
08:39:27	20	Lipidology?
08:39:28	21	A The American Board of Clinical Lipidology is a body that
08:39:33	22	provides certification in the practice of the clinical
08:39:37	23	lipidology.
08:39:38	24	So its role is to foster a program that is
08:39:41	25	comprehensive in scope in terms of continuing medical

education, but also a formal 200 questions exam that 08:39:44 1 2 applicants must pass in order to achieve certification in 08:39:50 3 clinical lipidology. And while I was president, it was my 08:39:55 role to completely redo the exam and update the criteria for 08:39:59 4 5 certification. 08:40:04 6 And by updating the criteria for certification and 08:40:05 7 managing the process of certification, are you essentially 08:40:10 08:40:13 8 acting as a gatekeeper? 9 08:40:14 Α Yes. Let's talk about your editorial positions. Have you held 10 08:40:17 11 editorial positions at any scientific journals? 08:40:21 12 Α Yes counsel. 08:40:24 08:40:25 13 MR. ELIKAN: Can we have PDX 6-3. 14 BY MR. ELIKAN: 08:40:25 08:40:28 15 What editorial positions have you held? I was I believe for three-and-a-half years, 16 08:40:31 Α 08:40:34 17 editor-in-chief of the Journal of Applied Research and 08:40:37 18 Experimental Therapeutics. Currently I'm editor in chief of the Contemporary 19 08:40:40 08:40:43 20 Cardiology series by the publisher Springer Verlag. 130-volume library of books that are subspecialized in 21 08:40:46 08:40:53 22 cardiology, and it is my role to not only recruit authors but 23 I also have to review every volume that comes in and it is my 08:40:58 08:41:03 24 role to further develop this into a 200-book collection.

I am also co editor-in-chief of the Archives of the

08:41:09 25

08:41:13	1	Medical Science Atherosclerotic Diseases, and for five years I
08:41:18	2	served as an associate editor of the Year Book of
08:41:26	3	Endocrinology section on lipids, lipoproteins, atherosclerosis
08:41:34	4	and coronary artery disease.
08:41:37	5	And I'm also an associate editor for the Journal of
08:41:41	6	Clinical Lipidology.
08:41:43	7	Q Do you have experience as a peer reviewer of scientific
08:41:48	8	journals?
08:41:48	9	A Yes, sir.
08:41:49	10	MR. ELIKAN: Can we have the next slide PDX 6-4.
08:41:49	11	BY MR. ELIKAN:
08:41:52	12	${\mathbb Q}$ And can you highlight some of the journals to which
08:41:56	13	you've served as a peer reviewer.
08:41:58	14	A Yes, Circulation, Journal of the American College of
08:42:02	15	Cardiology, Journal of Clinical Lipidology, the New England
08:42:09	16	Journal of Medicine and the Lancet.
08:42:12	17	Q Have you been involved in the conduct and administration
08:42:16	18	of clinical trials?
08:42:17	19	A Yes.
08:42:18	20	${\mathbb Q}$ Turning to page 7 of your CV, I want to look at the
08:42:22	21	section titled clinical investigation experience.
08:42:26	22	A Yes.
08:42:27	23	Q And if we look at 7 and 8 together I see you're listed as
08:42:42	24	a primary investigator in nine clinical trials is that right?
08:42:46	25	A Yes.

08:42:47	1	Q And what is primary investigator.
08:42:50	2	A Well, a primary investigator would be someone who manages
08:42:52	3	the clinical trial at the local level.
08:42:55	4	There are many centers around the world or in some
08:42:58	5	studies just in the U.S., but typically there are numerous
08:43:02	6	centers that enroll patients into the clinical trial and at
08:43:07	7	each site someone is the project leader.
08:43:10	8	And at each site the primary investigator would not
08:43:13	9	only assume responsibility for the appropriate conduct of the
08:43:18	10	trial, but also would be responsible for the care of that
08:43:21	11	patient if there was an adverse event or an adverse reaction
08:43:25	12	in response to the medication that was being studied.
08:43:28	13	Q In general, in terms of subject matter, what did these
08:43:34	14	nine clinical trials concern?
08:43:36	15	A They concerned management of dyslipidemia, hypertension,
08:43:41	16	diabetes.
08:43:42	17	Q Cardiovascular disease?
08:43:44	18	A Yes, cardiovascular risk factors.
08:43:47	19	Q Now, item number eight that's listed here is the STRENGTH
08:43:54	20	trial?
08:43:54	21	A Yes.
08:43:55	22	Q What's the STRENGTH trial?
08:43:56	23	A Well, the STRENGTH trial was a clinical trial that
08:44:00	24	evaluated the efficacy of Epanova over and above statin
08:44:07	25	therapy compared to a statin, and for the court reporter

08:44:15	1	Epanova is E-p-a-n-o-v-a and that trial was recently
08:44:17	2	terminated.
08:44:17	3	Q And what's the active ingredient in Epanova or
08:44:23	4	ingredients?
08:44:24	5	A It would be a formulation of EPA and DHA. And if I may,
08:44:29	6	counsel, with the Court's permission, instead of always saying
08:44:34	7	icosapentaenoic add and docosahexaenoic acid, would it be
08:44:40	8	permissible for me to just say EPA and DHA.
08:44:41	9	THE COURT: I think that's entirely permissible.
08:44:44	10	We've been using other acronyms as well. Thank you.
08:44:46	11	THE WITNESS: Thank you, Your Honor.
08:44:46	12	BY MR. ELIKAN:
08:44:48	13	Q Does it contain other omega-3 fatty acids or just EPA and
08:44:55	14	DHA?
08:44:55	15	A Yes, it's virtually impossible to purify these down to
08:44:59	16	100 percent purity.
08:45:00	17	Q And you said it's been terminated. Do you have an
08:45:03	18	understanding as to why it's been terminated?
08:45:05	19	MR. KLEIN: Objection. Beyond the scope of the
08:45:09	20	report, Your Honor.
08:45:10	21	THE COURT: Counsel?
08:45:15	22	MR. ELIKAN: Your Honor, it was just terminated
08:45:18	23	recently. It's listed as a current clinical trial in his CV.
08:45:22	24	He just said it was terminated. It seems to me it's just
08:45:26	25	recent events of the last few weeks and it just seems

08:45:29	1	informative on background.
08:45:31	2	MR. KLEIN: I have no objection to him saying it
08:45:33	3	was terminated but I have no idea what answer is coming.
08:45:36	4	We've had no notice that there was going to be any discussion
08:45:38	5	as to why it was terminated.
08:45:40	6	THE COURT: And Mr. Elikan, I sympathize with
08:45:44	7	Mr. Klein's objection because they he would have no way of
08:45:47	8	verifying the answer because there's no background information
08:45:52	9	that he's aware of relating to the termination. And I'm not
08:45:56	10	sure it's that relevant so
08:45:58	11	MR. ELIKAN: I can move on, Your Honor.
08:45:59	12	THE COURT: All right. The objection is
08:46:01	13	sustained.
08:46:01	14	BY MR. ELIKAN:
08:46:02	15	Q Are you author of any publication in the field
08:46:05	16	publications in the field of lipidology and in the field of
08:46:10	17	cardiovascular disease prevention?
08:46:14	18	A Yes, counsel.
08:46:15	19	Q I want to turn to page to the section in your CV
08:46:18	20	addressing publications. And am I correct that that bridges
08:46:23	21	from the bottom of page 11 to page 70?
08:46:26	22	A Yes.
08:46:27	23	Q How many total publications do you have?
08:46:31	24	A I have 14 textbooks addressing there are two that
08:46:37	25	address preventive cardiology, and then there are multiple,

08:46:41	1	but there's two volume work on hypertension, multiple works on
08:46:47	2	dyslipidemia. There's another one on glucolipotoxicity
08:46:50	3	toxicity in the heart. I'm sorry Madam court reporter I'll
08:46:55	4	spell that for you. G-l-u-c-o-l-i-p-o-t-o-x-i-c-i-t-y.
08:47:02	5	Then there's also a text book on diabetes. There
08:47:07	6	are 14 there are two more books coming later this year.
08:47:10	7	One called Therapeutic Lipidology and the other one called the
08:47:14	8	Preventive Cardiology Handbook.
08:47:17	9	I have 376 published papers, nearly 300 published
08:47:22	10	abstracts, 77 book chapters.
08:47:26	11	Q Was that a I lost track of the math but it seemed like
08:47:31	12	we were around 700 or thereabouts. What's your best estimate?
08:47:35	13	A Yes, sir, that's fine.
08:47:37	14	Q In general terms, what do these publications all of them
08:47:41	15	together, generally concern?
08:47:43	16	A They concern different facets of either cardiovascular
08:47:49	17	disease prevention or established cardiovascular disease.
08:47:53	18	They can address lipids, diabetes, hypertension, metabolic
08:47:59	19	syndrome. The range is wide.
08:48:01	20	Q And do you consult with pharmaceutical companies?
08:48:04	21	A Yes, sir.
08:48:04	22	Q I don't need an exhaustive list but what are some of the
08:48:08	23	pharmaceutical companies with which you've consulted?
08:48:11	24	A Amarin, Amgen, Merck, Regenera.
08:48:17	25	Q And in general terms what does your consulting work

## involve? 1 08:48:22 2 08:48:22 08:48:28 3 There are specific pharmaceutical drugs that I have also 08:48:32 4 08:48:37 5 pharmaceutical companies? 6 08:48:41 7 08:48:42 08:48:47 8 9 08:48:50 10 08:48:54 11 08:48:57 12 08:49:01 08:49:04 13 understand that as well. 08:49:07 14 15 08:49:08 16 08:49:12 08:49:16 17 18 08:49:20 19 08:49:25 20 08:49:31 21 08:49:34 08:49:37 22 23 08:49:39 24 08:49:44 08:49:48 25

It involves performing research. It involves speaking.

lectured on. And it's pretty much a balance between the two.

Why do you choose to do consulting work with

Because I think it's obviously extremely important to advance medical science, and they need to partner with physicians who are committed to research. If we don't do research, nothing is going to move forward.

And progress in medicine is tantamount in being able to deliver good effective medical care. And patients are willing to participate in clinical trials because they

Okay. And the speaking engagements, why do you choose to speak about drugs for pharmaceutical companies?

Because I love teaching. I love teaching my peers. it's extremely important that they be provided with up to date accurate information on what these medications do and how they are best applied in everyday medical care.

Let's turn to your educational background. Where did you receive your medical training?

I went to medical school at the Wayne State University School of Medicine in Detroit, Michigan, and I did my residency training at the University of Iowa, hospitals and

08:49:54	1	clinic. I did two years in obstetrics and gynecology and two
08:49:58	2	years in family medicine.
08:50:02	3	Q And where did you receive your undergraduate degree and
08:50:06	4	in what discipline did you major?
08:50:08	5	A I received my undergraduate degree at Princeton
08:50:15	6	University in Princeton, New Jersey, in biochemistry.
08:50:15	7	Q Did you get a further degree aside from medical school
08:50:19	8	another graduate degree?
08:50:21	9	A Yes, sir. I have a doctorate in biochemistry from
08:50:28	10	Michigan State University in East Lansing, Michigan.
08:50:29	11	MR. ELIKAN: Your Honor, we offer Dr. Toth as an
08:50:33	12	expert in lipidology, the treatment of hypertriglyceridemia,
08:50:35	13	including severe hypertriglyceridemia and the prevention and
08:50:39	14	treatment of cardiovascular disease.
08:50:40	15	MR. KLEIN: No objection.
08:50:41	16	THE COURT: The request to certify Dr. Toth as
08:50:45	17	an expert in those three areas is granted.
08:50:49	18	MR. ELIKAN: Thank you, Your Honor.
08:50:49	19	BY MR. ELIKAN:
08:50:51	20	Q We'll be talking about Vascepa today. Is that a drugs
08:50:55	21	that you prescribe?
08:50:55	22	A Yes.
08:50:56	23	Q In your opinion, is it an important addition to the
08:51:01	24	armamentarium, the treatments available for physicians to
08:51:07	25	treat hypertriglyceridemia?

08:51:08	1	A Yes, counsel.
08:51:09	2	Q And why?
08:51:10	3	A Because it's solved a very important problem in clinical
08:51:13	4	lipidology and cardiovascular medicine, namely, that it is a
08:51:17	5	medication that can be used in patients with severe
08:51:21	6	hypertriglyceridemia to lower triglycerides without raising
08:51:28	7	the LDL cholesterol or the so-called bad cholesterol.
08:51:32	8	Q Did review Dr. Heinecke's testimony?
08:51:35	9	A I did.
08:51:35	10	Q Do you recall that Dr. Heinecke testified that the
08:51:38	11	asserted claims would have been obvious to a person of
08:51:44	12	ordinary skill in the art in March of 2008?
08:51:46	13	A Yes.
08:51:47	14	Q Do you agree with him?
08:51:49	15	A No, sir.
08:51:49	16	Q Now, before we get further into the substance of your
08:51:55	17	opinion that the asserted claims would not have been obvious,
08:51:58	18	I want to touch upon some scientific background issues.
08:52:03	19	MR. ELIKAN: Can we have PDX 6-5, Mr. Brooks.
08:52:03	20	BY MR. ELIKAN:
08:52:08	21	Q Can you explain what PDX 6-5 shows.
08:52:12	22	A Yes, counsel. This is a schematic that summarizes the
08:52:17	23	metabolism of lipoproteins, namely the conversion of VLDL or
08:52:22	24	very low density lipoproteins to LDL or low density
08:52:28	25	lipoproteins.

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If we go all the way to the left, under number one, we see that the VLDL particles which are highly enriched in triglyceride are produced and secreted by the liver into the bloodstream.

Now, this is very important because the VLDL particles are enriched with triglyceride and cholesterol and it is the role of these particles to distribute stored energy to various cells of the body.

Think of the triglyceride as something of a gasoline that can be combusted in the engine of a vehicle, which in the case of the cell, would be the mitochondria.

The triglycerides can't be transported in blood by themselves because they're fats and fats do not dissolve in water. Oil and water don't mix. The lipoprotein is able to carry these triglycerides and cholesterol through the blood and get them to the cells that need this form of stored energy.

- Q So they basically act like -- you analgized to gas before in saying the triglyceride are like gas, and the lipoproteins the gas truck.
- A Yes, that is a very apt analogy.
- Q And can you explain what the squiggly lines and dots are in 2.
- A Yes, the squiggly lines in red represent triglycerides and the yellow globules represent cholesterol of course highly

schematically.

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So these VLDL particles are in the blood after they're secreted, and as we move to number 3, the triglycerides have to be removed so that they can be processed by cells. And there's an enzyme in the body called lipoprotein lipase and that's l-i-p-o-p-r-o-t-e-i-n new word l-i-p-a-s-e.

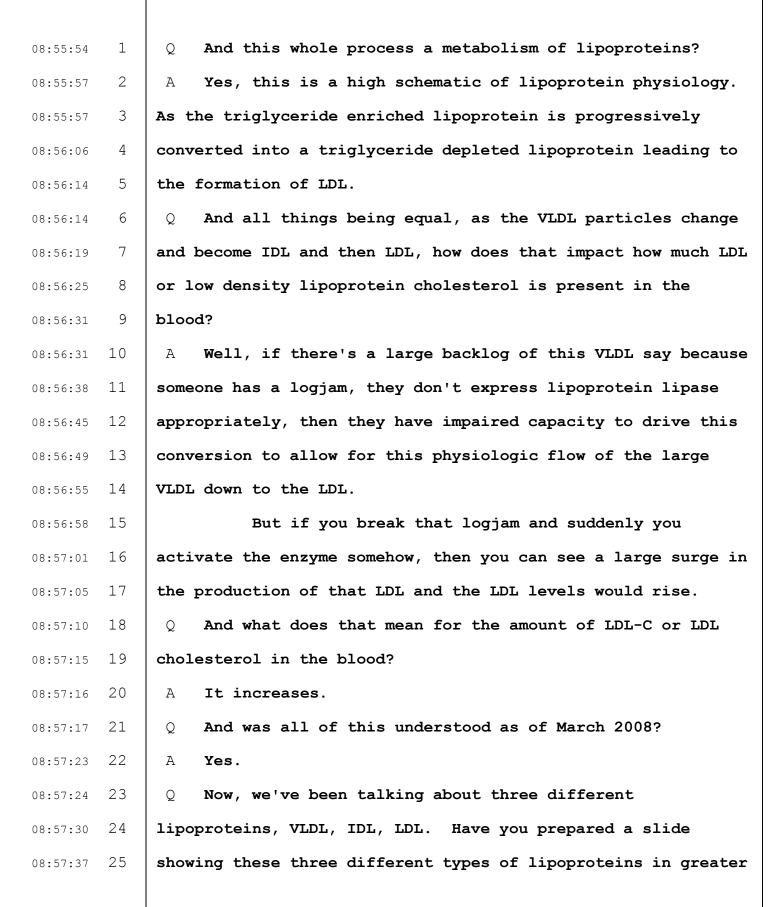
This enzyme removes the triglycerides and facilitates their breakdown into their constituent fatty acids. The fatty acids can be burned as fuel and they drive intermediary metabolism.

Now, what happens here as the triglycerides are removed, the particle gets smaller and the large VLDL particle under number 2 becomes and IDL particle in number 3.

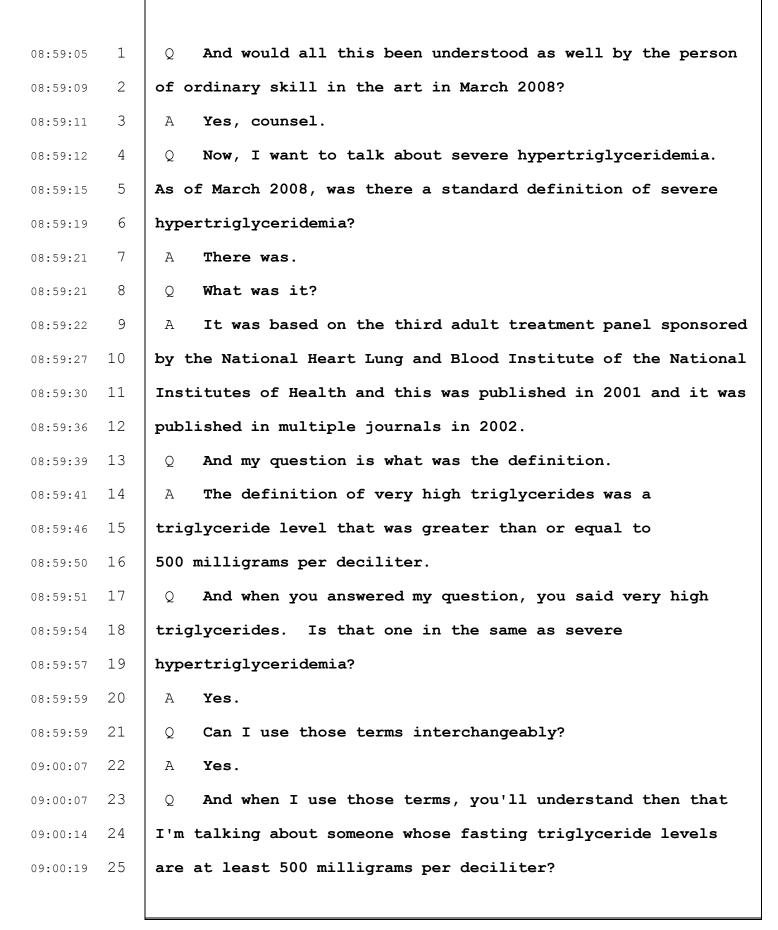
Q What does that stand for?

A Intermediate density lipoprotein. This is still relatively enriched with triglyceride as you can see, but as more and more of the triglyceride is removed, the particle becomes yet smaller.

And under 4 this is an LDL particle, the low density lipoprotein particle, and this is a particle that is the so-called bad cholesterol. It carries cholesterol, but this LDL, if it's not cleared, can also wind up in blood vessel walls leading to the development of atherosclerotic disease or hardening of the arteries.



08:57:42	1	detail.
00.37.42	_	detail.
08:57:43	2	A Yes, counsel.
08:57:45	3	MR. ELIKAN: Can we have PDX 6-6.
08:57:45	4	BY MR. ELIKAN:
08:57:48	5	Q Can you explain what is depicted PDX 6-6.
08:57:52	6	A Yes. This schematic demonstrates very nicely that as you
08:57:56	7	convert a VLDL particle to the IDL particle in the middle, you
08:58:03	8	will decrease the triglyceride content of the VLDL which
08:58:07	9	begins at around 55 to 80 percent, and this will decrease to
08:58:13	10	approximately 20 to 50 percent.
08:58:13	11	At the same time it becomes more cholesterol
08:58:16	12	enriched going from 5 to 15 percent of total content up to 20
08:58:22	13	to 40 percent.
08:58:23	14	Q Are you describing the passage from VLDL to IDL right
08:58:29	15	now?
08:58:29	16	A Yes.
08:58:30	17	Q Okay. Can you walk us through the LDL.
08:58:33	18	A Yes. So as we go from IDL to LDL, there is even more
08:58:42	19	reduction of triglyceride content within the core of the
08:58:46	20	particle and the cholesterol becomes even more enriched within
08:58:50	21	the core of that particle.
08:58:52	22	Q And what levels of triglycerides and cholesterol are
08:58:55	23	present in the low density lipoprotein?
08:58:59	24	A It would be 5 to 15 percent triglyceride and 40 to
08:59:04	25	50 percent cholesterol.



2 09:00:24 3 09:00:29 09:00:32 4 5 09:00:32 6 09:00:34 7 09:00:38 09:00:42 8 9 09:00:46 10 09:00:50 11 09:00:54 12 09:00:54 09:00:54 13 09:01:07 14 09:01:07 15 16 09:01:13 09:01:13 17 09:01:20 18 19 09:01:24 09:01:31 20 21 09:01:37 09:01:41 22 09:01:45 23 09:01:48 24 09:01:53 25

09:00:22

1

A Yes.

Q Was it understood as of March 2008, that very high levels of triglycerides cause health problems?

A Yes.

Q What types of health problems?

A There were two principle health problems. The first and foremost one was the heightened risk of developing pancreatitis. Pancreatitis is an acute inflammatory condition of the pancreas.

The pancreas is a vital organ, it's located behind your stomach, and it's role is to produce digestive enzymes that are secreted into the gastrointestinal tract, but importantly the pancreas plays a critical role in regulating glucose metabolism because it also is responsible for producing insulin and glucagon.

In the setting of severe hypertriglyceridemia inflammatory changes an occur within the pancreas that can lead to sudden devastating injury to the pancreas leading to the dissolution of pancreatic tissue resulting in severe pain, inability to eat, to drink, and it constitutes a medical emergency. But even more importantly in some cases it request even result in death.

The second potential complication of severe hypertriglyceridemia is heightened risk for the development os atherosclerotic disease, cardiovascular disease.

09:01:57	1	MR. ELIKAN: Please turn, and you can do so in
09:01:58	2	your binder or on the screen, to PX 989, the ATP III2 which is
09:02:10	3	what we've been calling it. Which the parties, Your Honor,
09:02:14	4	have stipulated as prior art to the asserted.
09:02:17	5	And, Your Honor, either I since there's a
09:02:17	6	stipulation as to which documents, some of them are stipulated
09:02:20	7	to as prior art, would you would you like me to refer to
09:02:25	8	the document and the paragraph number or is it sufficient to
09:02:28	9	just mention the document?
09:02:30	10	THE COURT: It's sufficient to just mention the
09:02:32	11	document via the exhibit number.
09:02:35	12	MR. ELIKAN: Okay. It's 324 is the joint
09:02:37	13	stipulations of fact in which the stipulations are contained.
09:02:41	14	THE COURT: Yes, what I mean is I realize this
09:02:43	15	is a stipulated document, you can just refer to the exhibit
09:02:47	16	when you reference the document.
09:02:49	17	MR. ELIKAN: Okay. I understand but this is
09:02:51	18	going to different issue, Your Honor.
09:02:51	19	There's stipulation as to certain articles that
09:02:54	20	they constitute prior art and that's what I'm asking Your
09:02:57	21	Honor is whether I ought to recite the paragraph and the
09:03:02	22	document which those occur or is it sufficient for me to just
09:03:05	23	say that it's the subject of a stipulation as prior art.
09:03:09	24	THE COURT: You could just refer to the latter
09:03:11	25	that it's subject of stipulation as to the prior art.

1	MR. ELIKAN: Okay.
2	BY MR. ELIKAN:
3	Q Was ATP III, was this considered an authoritative text by
4	clinicians treating hypertriglyceridemia and severe
5	hypertriglyceridemia as of March 2008?
6	A Yes. It was a national guideline, a national standard
7	put together by a broad range of experts by the National
8	Institutes of Health.
9	Q Let's go to page 194, to table 7.2-4 titled "Treatment
10	Considerations For Elevated Serum Triglycerides."
11	Can you explain in general what this table concerns.
12	A Yes. It summarizes the triglyceride categories as well
13	as special treatment considerations.
14	$\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ $
15	different serum triglyceride categories, do you see that?
16	A I do.
17	$\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ $
18	different categories of elevated serum triglycerides that were
19	recognized by ATP III?
20	A There are three; borderline high triglycerides, which
21	range from 150 to 199; high triglyceride, which range from 200
22	to 499, and very high triglycerides or severe
23	hypertriglyceridemia, greater than 500 milligrams per
24	deciliter.
25	$\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ $
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

did ATP III state were the goals of therapy? 1 09:04:54 2 There are two; number one, to reduce the triglycerides to 09:04:58 09:05:02 3 prevent the development of acute pancreatitis, that was priority number one. 09:05:06 4 Priority number two was, once that was under 09:05:08 5 control, to prevent the development of coronary heart disease. 6 09:05:10 7 So were these -- you said once it's under control. 09:05:20 09:05:20 8 these considered to be goals to be pursued from the get-go, or 9 is it a chronological thing? 09:05:23 You mean were the goals to be achieved simultaneously? 10 09:05:24 Α 11 In the ideal world? 09:05:29 Q 12 Well, sure. We would love to prevent everything we can, 09:05:32 09:05:36 13 but, in the real world, getting the triglycerides down was 09:05:44 14 priority number one because you wanted to make sure you did 09:05:48 15 everything possible to prevent the risk of pancreatitis. Once you had that under control, then you can go ahead and chase 16 09:05:51 09:05:56 17 down the risks for the coronary heart disease. 18 So that's the second priority then. 09:05:59 19 Yes, sir. 09:06:01 Α And moving on to the borderline high and high groups, 09:06:01 20 21 what did ATP III state were the goals or goal of therapy? 09:06:05 09:06:09 22 Α For both of those groups, the primary goal was to achieve 09:06:14 23 what they called the risk stratified LDL cholesterol goal. 09:06:20 24 Allow me to explain. When a patient walks through 09:06:24 25 the door, if they were in primary prevention, meaning they did

not yet manifest evidence of heart disease, then you would 09:06:28 1 2 evaluate their risk factor burden. 09:06:33 3 You would then calculate a ten-year projected risk 09:06:36 score, which at the time was the Framingham risk score, and 09:06:39 4 5 that would help you to determine what their level of risk was, 09:06:43 6 let's say low or moderate or high. 09:06:47 7 And those different strata of risk dictated that you 09:06:50 09:06:57 8 reduced LDL progressively more aggressively because the higher 9 the risk, the lower the LDL that was targeted. So that's what 09:07:02 that means. 10 09:07:07 11 And in secondary prevention since everyone is high 09:07:09 12 risk, there was an established LDL goal. 09:07:12 09:07:16 13 So the primary goal for both according to ATP III is 09:07:20 14 achieve LDL-C goal? 09:07:31 15 Α Yes. 16 In March 2008, was there a physiological understanding as 09:07:32 Q 17 to why patients might suffer from severe hypertriglyceridemia? 09:07:36 09:07:40 18 Α Yes. 09:07:43 19 MR. ELIKAN: Let's turn to page 190, to table VII.2-1, and can we highlight the title of the table, 09:07:46 20 21 Mr. Brooks. 09:07:46 09:07:46 22 BY MR. ELIKAN: 09:07:59 23 What does this table concern? 09:07:59 24 The classification and causes of elevated serum 09:08:02 25 triglycerides.

Okay. I want to look at the very high triglycerides 09:08:03 1 2 portion. 09:08:06 09:08:08 3 Do you see that one the causes listed for very high triglycerides is familial lipoprotein lipase deficiency? 09:08:12 4 09:08:18 5 Α Yes. What is that? 6 09:08:18 7 Familial lipoprotein lipase deficiency is a deficiency 09:08:20 09:08:27 8 state that is genetically determined for that enzyme 9 lipoprotein lipase that we discussed earlier. It's the enzyme 09:08:31 10 that extracts and metabolizes triglycerides from the VLDL, the 09:08:33 11 IDL, and there are patients who have inborn errors in the gene 09:08:40 12 for that enzyme, and they either underexpress the enzyme or 09:08:45 09:08:48 13 they express a faulty version of it and they have reduced activity of the enzyme. 09:08:53 14 So how does that cause very high triglycerides? 09:08:54 15 They have inadequate capacity to convert the VLDL to IDL 16 09:08:58 Α 09:09:04 17 and then to LDL. 18 Earlier you mentioned I think a logjam? 09:09:06 09:09:08 19 Yes. Α 20 Does that occur with somebody with this condition? 09:09:08 The VLDLs, the triglycerides are increased in blood 21 Α Yes. 09:09:11 09:09:17 22 because these patients have impaired capacity to break the 09:09:22 23 VLDLs and triglycerides down. 09:09:25 24 Do you see right underneath the entry that we've been 09:09:27 25 looking at it says familial apolipoprotein C-II deficiency?

Α Yes. 09:09:34 1 2 Q What is that? 09:09:34 09:09:35 3 Familial apo C-II deficiency is a deficiency state in apo C-II. Apo C-II is a naturally occurring activator of 09:09:44 4 09:09:47 5 lipoprotein lipase. 6 Many enzymes have complex regulation, lipoprotein 09:09:48 7 lipase is one of them. It has both intrinsic activators and 09:09:53 09:09:59 8 inhibitors in the body and apo C-II is an activator, and when 9 there isn't enough available because the patient 09:10:04 10 underexpresses it, there may be less activity of the enzyme 09:10:07 11 available to do the work of breaking the VLDL down to IDL and 09:10:12 12 then LDL. 09:10:18 09:10:19 13 Similarly, there's another one called apo C-III 09:10:25 14 overexpression which is the inhibitor of the enzyme, and then 09:10:28 15 you get a functional deficiency in the enzyme. Let's focus on apo C-II, I've abbreviated it. You 16 09:10:31 09:10:38 17 understand though what I'm referring to? 18 Yes, of course. 09:10:38 Α 09:10:38 19 How does that in a nutshell cause very high 09:10:41 20 triglycerides? If you can use an analogy like a logjam or the 21 like that would be appreciated. 09:10:44 09:10:46 22 Α Sure. So if the activator of the enzyme is less available, the activity of the lipoprotein lipase is reduced 09:10:49 23 09:10:54 24 and there isn't enough of it to drive that conversion of VLDL

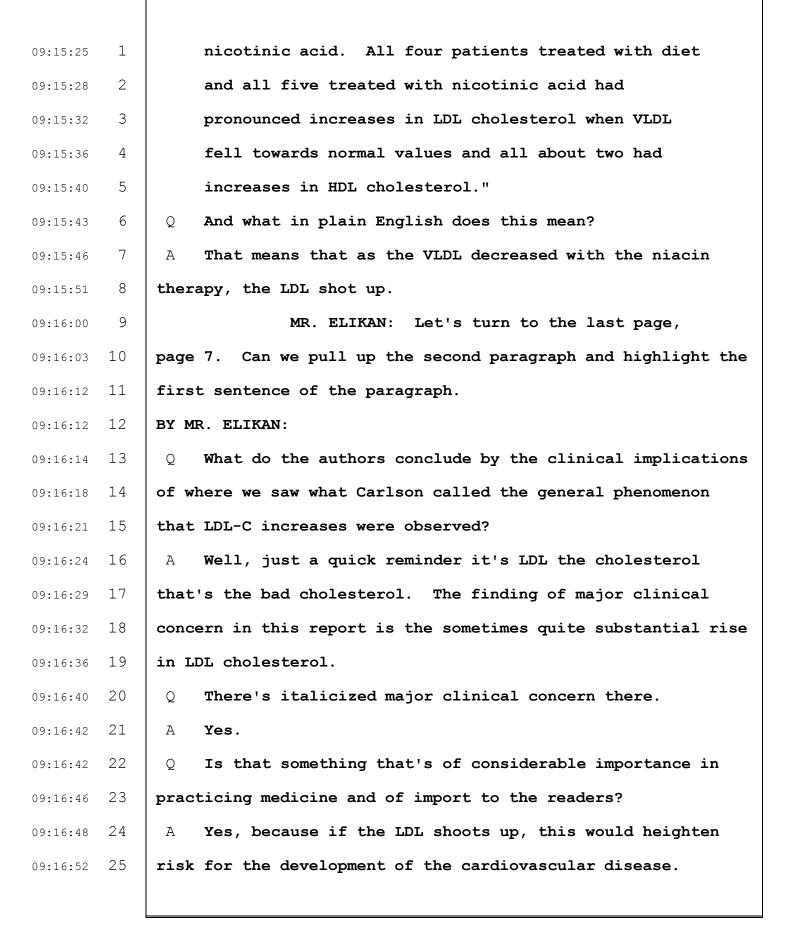
to IDL and VLDL will accumulate.

09:10:59 25

09:11:04	1	Q Let's talk now about the approved treatments for severe
09:11:09	2	hypertriglyceridemia available before Vascepa.
09:11:12	3	As of March 2008, what were the FDA approved
09:11:18	4	treatments for very high triglycerides?
09:11:20	5	A They would have been Lovaza. It would have been fibrate
09:11:25	6	drugs like fenofibrates and niacin or nicotinic acid was also
09:11:32	7	approved.
09:11:35	8	Q Did these prior approved triglyceride-lowering products
09:11:39	9	raise LDL-C in patients with very high triglycerides?
09:11:44	10	A They did.
09:11:44	11	Q That's true of all these treatments?
09:11:47	12	A Yes.
09:11:48	13	Q As of March 2008, did the prior art reflect that all
09:11:53	14	these treatments increased LDL-C in patients with very high
09:11:59	15	triglycerides?
09:11:59	16	A It did.
09:12:00	17	Q Did they reflect a substantial rise in LDL-C or simply
09:12:07	18	something small-ish?
09:12:08	19	A Well, typically substantial because the rise was
09:12:11	20	proportional to the magnitude of the elevation of the
09:12:15	21	triglycerides.
09:12:17	22	Q As of March 2008 for how long had it been recognized that
09:12:22	23	triglyceride-lowering agents could produce large LDL-C rises
09:12:28	24	in patients with very high triglycerides?
09:12:31	25	A Well, depending upon the drug, anywhere from one to

three decades. 1 09:12:34 2 Let's turn to PX 1026. 09:12:35 09:12:47 3 And this is an article that's been admitted, that Dr. Heinecke discussed at his -- during his testimony, and the 09:12:53 4 09:12:57 5 parties have stipulated that it's prior art to the asserted patents. 09:13:00 7 THE COURT: And I just realized that it would be 09:13:01 09:13:04 8 helpful to have the paragraph number in the stipulation if you 9 have it because I remember my comment at the start of the 09:13:09 trial as to the number of paragraphs. 10 09:13:12 11 I did find the stipulation relating to ATP III 09:13:14 12 and that's paragraph 47. So for this article, what paragraph 09:13:19 09:13:23 13 of the stipulation. Do you have that number? 09:13:26 14 MR. ELIKAN: Paragraph 95. 09:13:27 15 THE COURT: Thank you. BY MR. ELIKAN: 09:13:27 16 09:13:29 17 Looking at the top of the first page, what's -- what was 09:13:32 18 the date of publication? 09:13:34 19 This was published in Atherosclerosis in 1977. And what triglyceride lowering drug, if any is -- was the 09:13:38 20 21 subject of this paper? 09:13:45 09:13:47 22 Α Niacin. 09:13:49 23 And I want to look at the summary on the first page. 09:13:52 24 in the first sentence there's reference to Type V 09:14:01 25 hyperlipoproteinemia? Did I pronounce that right?

09:14:05	1	A Yes, you did great, counsel.
09:14:06	2	Q Okay. And you recall that Dr. Heinecke testified that
09:14:08	3	Type V can we call it HLP?
09:14:12	4	A Yeah.
09:14:12	5	Q That Type V HLP is very high triglycerides. Do you
09:14:17	6	recall that testimony?
09:14:18	7	A I do.
09:14:19	8	Q Do you agree with him?
09:14:21	9	A I do agree with him.
09:14:22	10	Q Turning back to Carlson, the next sentence makes
09:14:25	11	reference to nicotinic acid. What's nicotinic acid?
09:14:30	12	A It's the same as niacin.
09:14:32	13	Q And what does this sentence say about the effect of
09:14:36	14	nicotinic acid or niacin on LDL in Type V HLP?
09:14:42	15	A That it increases LDL.
09:14:46	16	Q I want to turn to page 3 now, to the second paragraph
09:14:50	17	under Results.
09:14:54	18	What did the authors observe about the effect of
09:15:01	19	nicotinic acid or niacin on LDL cholesterol in patients with
09:15:09	20	Type V HLP?
09:15:10	21	A Well, I quote,
09:15:11	22	"That the rise in LDL and HDL cholesterol is
09:15:11	23	a general phenomenon when Type V HLP is treated is
09:15:19	24	apparent from the results of nine patients with Type
09:15:22	25	V HLP who were treated with diet alone or with



MR. ELIKAN: Can we highlight the next sentence 09:16:56 1 2 09:16:58 now. 3 BY MR. ELIKAN: 09:16:58 What do the authors explain as the reason why an LDL 09:17:00 4 increase would be -- or would have been a major clinical 5 09:17:05 6 concern? 09:17:09 7 They note that this may be quite atherogenic which just 09:17:10 09:17:16 8 means it potentiates the development of heart disease and 9 theoretically the benefit of lowering VLDL in these patients 09:17:19 may be overridden by the potential danger due to the rise in 10 09:17:25 11 LDL. 09:17:29 12 Before March of 2008, did subsequent experience with 09:17:30 09:17:35 13 fibrates further inform the perception that large increases in 14 LDL-C were a general phenomenon when lowering triglycerides in 09:17:40 09:17:45 15 patients with very high triglycerides? 16 Yes, counsel. 09:17:47 Α 09:17:48 17 And very generally, what were or what are fibrates? 18 The fibrates are what we call fibric, f-i-b-r-i-c, acid 09:17:52 derivatives. They are molecules that exert effects on lipid 19 09:18:00 and lipoprotein metabolism and they help to reduce VLDL and 09:18:05 20 21 triglycerides and modestly increase the good or HDL 09:18:13 09:18:17 2.2 cholesterol. 09:18:17 23 As of March 2008 had fibrates been widely used as a lipid 24 altering drug including for severe hypertriglyceridemia? 09:18:22 25 Α Yes. 09:18:25

09:18:25	1	Q And what did the experience with fibrates teach about
09:18:33	2	what happened to LDL-C when triglycerides were lowered in
09:18:38	3	patients with very high triglycerides?
09:18:41	4	A The LDL increased in proportion to the baseline
09:18:44	5	triglyceride levels.
09:18:45	6	Q Let's turn to PX 388.
09:18:55	7	Let me ask a question before we look there. This
09:18:59	8	rise, was it observed in patients with very high triglycerides
09:19:03	9	even when the drug didn't rise to a or rise or rise
09:19:09	10	dramatically in patients with lower triglycerides?
09:19:12	11	A Counsel, could you pleads repeat that.
09:19:14	12	Q Sure. We were talking about the rise in LDL-C.
09:19:20	13	A Yes.
09:19:21	14	Q So in the very high triglyceride population, you talked
09:19:28	15	about a rise. Was there a large rise in the very high
09:19:35	16	triglyceride population even when the drug didn't do that in
09:19:39	17	patients with lower triglycerides?
09:19:41	18	A Yes, that's correct.
09:19:44	19	Q Now, let's turn to PX 388, this is the Tricor label
09:19:51	20	previously admitted and discussed during Dr. Heinecke's
09:19:56	21	testimony, is that right?
09:19:57	22	A Yes.
09:19:57	23	MR. ELIKAN: And the parties, Your Honor, have
09:19:59	24	stipulated that PX 388 is prior art and that's in paragraph
09:20:05	25	105 of the joint stipulations.

09:20:07	1	THE COURT: Thank you.
09:20:07	2	BY MR. ELIKAN:
09:20:07	3	${\mathbb Q}$ Do you recognize this as the product label for the
09:20:16	4	fenofibrates Tricor?
09:20:17	5	A I do.
09:20:18	6	MR. ELIKAN: Can we turn to Table 1 on page 6
09:20:22	7	and highlight the title.
09:20:22	8	BY MR. ELIKAN:
09:20:24	9	Q In general terms what information it contained in this
09:20:27	10	table?
09:20:27	11	A It contains mean percent changes in lipid and lipoprotein
09:20:34	12	parameters at the end of treatment with Tricor.
09:20:38	13	Q I want to look at the bottom row of the table. Do you
09:20:41	14	see this table describes lipid effects for a group having
09:20:45	15	triglycerides of at least 150?
09:20:48	16	A Yes.
09:20:48	17	Q And LDL-C exceeding 160?
09:20:57	18	A Yes.
09:20:57	19	Q Looking at the far right of the bottom row, what does the
09:21:01	20	table indicate was the mean baseline triglyceride value of
09:21:05	21	this group?
09:21:06	22	A It was 231.9 milligrams per deciliter.
09:21:10	23	Q And does the table provide information about the effect
09:21:13	24	of Tricor on LDL-C in those patients?
09:21:18	25	A It does.

09:21:19	1	MR. ELIKAN: Now, I want to turn to page 7,
09:21:21	2	Table 2. And can we highlight the title again.
09:21:21	3	BY MR. ELIKAN:
09:21:31	4	Q What information is in this table?
09:21:33	5	A This is a summary of the effects of Tricor in patients
09:21:36	6	with Frederickson Type IV and Type V hyperlipidemia.
09:21:42	7	So consistent with what has previously been noted
09:21:46	8	here at trial, the Type V hyperlipidemia would be patients
09:21:52	9	with severe hypertriglyceridemia, and the Type IVs typically
09:21:55	10	have not as severe. They were typically, typically under 500.
09:21:59	11	Q Let's look at the table itself. In the top half of the
09:22:03	12	table do you see a reference to Study 1?
09:22:06	13	A Yes.
09:22:06	14	Q And looking at the left-hand column under Study 1, what's
09:22:10	15	the range of triglycerides of patients in Study 1?
09:22:14	16	A 350 to 499.
09:22:16	17	Q And looking at the row labeled triglycerides, what does
09:22:20	18	the table indicate was the mean baseline triglyceride level of
09:22:24	19	the patients in the treatment arm in Study 1?
09:22:27	20	A 432.
09:22:30	21	Q Does this table provide information about the effect of
09:22:34	22	fenofibrates on the LDL-C levels in this patient population?
09:22:40	23	A Yes, counsel.
09:22:42	24	Q In the bottom half the paper there's reference to Study
09:22:45	25	2, do you see that?

09:22:46	1	A I do.
09:22:47	2	Q And looking to the left, directly under Study 2, what's
09:22:51	3	the range of baseline triglycerides of patients in Study 2?
09:22:55	4	A 500 to 1500.
09:22:57	5	Q So are those patients with very high triglycerides?
09:23:00	6	A Yes.
09:23:00	7	Q Did this table provide information about the effect of
09:23:04	8	fenofibrate on the LDL-C in patients with very high
09:23:08	9	triglycerides?
09:23:09	10	A It did.
09:23:10	11	Q Have you prepared a demonstrative summarizing the
09:23:13	12	information of the Tricor label showing the effects of
09:23:17	13	fenofibrate on LDL-C in these different patient populations?
09:23:21	14	A Yes.
09:23:22	15	MR. ELIKAN: Can we have PDX 6-7.
09:23:22	16	BY MR. ELIKAN:
09:23:25	17	Q What does this illustrate?
09:23:26	18	A Well, moving from left to right, the patients with mixed
09:23:31	19	dyslipidemia with triglycerides greater than or equal to 150
09:23:35	20	but a mean of 231.9, we see that there is a 20.1 percent
09:23:42	21	reduction in LDL cholesterol compared to baseline.
09:23:47	22	Q A reduction.
09:23:49	23	A Yes. And moving to the middle histogram, the orange one,
09:23:55	24	these were the patients were high triglycerides, 350 to 499,
09:24:00	25	with a mean of 432. And there's a nonsignificant 14

and-a-half percent rise in the LDL compared to baseline or 1 09:24:04 2 two-and-a-half percent compared to placebo. 09:24:09 3 And moving all the way to the right, this purple 09:24:13 histogram for the patients with very high triglyceride, 09:24:17 4 5 triglycerides 500 to 1500 with mean of 726, the LDL 09:24:23 cholesterol increased 45 percent compared to baseline, 6 09:24:29 7 49 percent compared to placebo. 09:24:33 09:24:36 8 And putting this all together, does this mean that 9 fenofibrate lowered LDL-C in patients with moderately elevated 09:24:40 triglycerides? Is that right? 10 09:24:46 11 Yes. 09:24:48 Α 12 And did not cause a statistically significant rise in 09:24:48 Q 09:24:52 13 LDL-C with patients with high triglyceride, the 350 to 499. 14 Α That's correct. 09:24:58 15 But caused large statistically significant increases in 09:24:59 16 LDL-C in patients with very high triglycerides. 09:25:07 09:25:08 17 Α That is also correct. 18 MR. ELIKAN: Your Honor, we move PDX 6-7 as a 09:25:11 summary under rule 1006, if this would help, Your Honor. 09:25:13 19 20 is in the documents we looked at, and it's a compilation of 09:25:17 21 that data. 09:25:22 09:25:22 22 THE COURT: Mr. Klein? 09:25:23 23 MR. KLEIN: I don't object. 09:25:24 24 THE COURT: That request is admitted, PDX 6-7 09:25:28 25 will be admitted as summary exhibit.

(Plaintiffs' Exhibit 6-7 received in 09:25:28 1 09:25:28 evidence.) 2 THE COURT: And this is part of -- I don't know 09:25:31 3 that I have designated -- well, I just need a way to keep 09:25:38 track of demonstrative evidence offered that I admitted as a 09:25:47 4 5 summary exhibit and I think reference to PDX 6-7 will suffice. 09:25:53 6 Thank you. 09:26:01 7 BY MR. ELIKAN: 09:26:01 09:26:07 8 What if anything would these LDL-C effects have told a 9 person of ordinary skill in the art in March 2008 about 09:26:09 whether LDL-C effects observed in patients with less than 500 10 09:26:11 11 would be predictive, absolutely predictive of LDL-C effects in 09:26:16 12 patients with very high triglycerides? 09:26:23 09:26:26 13 Well, that would be an incorrect conclusion to draw 14 because clearly in the patients with more moderate 09:26:29 09:26:33 15 hypertriglyceridemia with a mean of 232 actually LDL 16 decreased. 09:26:37 17 350 to 500 there's no statistically significant rise 09:26:38 18 though there slight right, there's directional increase. 09:26:44 19 then when you go above 500 you zoom up. 09:26:46 Was there other prior art that reported that fibrates had 20 09:26:51 different effects on LDL-C depending upon the patient's 21 09:26:56 09:27:02 22 baseline triglyceride levels? 23 Yes. 09:27:04 Α 09:27:06 24 MR. ELIKAN: Let's turn to PX 1027. 25 And, Your Honor, this is the 2006 chapter by 09:27:11

09:27:17	1	Dr. Mahley in Goodman & Gilman's that Dr. Heinecke testified
09:27:21	2	about. It's pre-admitted, and in the joint stipulations of
09:27:25	3	fact the parties agreed that it was prior art in the asserted
09:27:31	4	patents, and the citation of that is 96.
09:27:33	5	THE COURT: Eighty-six?
09:27:35	6	MR. ELIKAN: Ninety-six.
09:27:38	7	THE COURT: Ninety-six, thank you.
09:27:38	8	BY MR. ELIKAN:
09:27:39	9	Q What is Goodman & Gilman?
09:27:41	10	A Goodman & Gilman is a widely recognized textbook on
09:27:46	11	pharmacology.
09:27:47	12	Q I want to turn to page 6.
09:27:51	13	What is this chapter in Goodman & Gilman directed
09:27:55	14	to?
09:27:55	15	A The drug therapy for hypercholesterolemia and
09:28:01	16	dyslipidemia.
09:28:02	17	MR. ELIKAN: I now want to turn to page 31, and
09:28:05	18	I want to direct your attention to the left-hand column and
09:28:09	19	looking at the second full paragraph, let's highlight the
09:28:13	20	sentence starting with "The second generation agents."
09:28:13	21	BY MR. ELIKAN:
09:28:20	22	Q What does this sentence say about the LDL-C effects of
09:28:24	23	second generation fibrates on LDL-C levels in patients
09:28:28	24	depending on baseline triglyceride levels?
09:28:31	25	A I quote,

"The second generation agents, such as

You also mentioned Lovaza when you were listing the

2 fenofibrate, bezafibrate, and ciprofibrate, lower 09:28:36 3 VLDL levels to a degree similar to that produced by 09:28:45 gemfibrozil, but they also are more likely to 09:28:50 4 5 decrease LDL levels by 15 to 20 percent. In patients 09:28:54 with more marked hypertriglyceridemia, for example, 6 09:28:58 7 400 to 1000, a similar fall in triglycerides occurs, 09:29:02 09:29:08 8 but LDL increases of 10 to 30 percent are seen 9 frequently." 09:29:12 What, generally, does this reference tell us about 10 09:29:15 11 whether the effects of a triglyceride lowering agent on LDL-C 09:29:19 12 in patients with lower baseline triglycerides would be 09:29:25 09:29:29 13 predictive of the LDL-C effects of a triglyceride lowering patients in patients with very high triglycerides? 14 09:29:33 15 Well, it instructs us that it's two very different 09:29:36 clinical scenarios, because in patients with more mild 16 09:29:41 17 hypertriglyceridemia, the LDL decreases 15 to 20 percent, but 09:29:47 18 in patients with triglycerides that are more markedly 09:29:52 elevated, 400 to a thousand, there's the opposite effect where 19 09:29:57 20 the LDL increases. 09:30:00 And is this phenomenon with fibrates, is this a similar 21 09:30:03 09:30:09 22 or the same phenomenon or a different one as we saw with 09:30:13 23 niacin in the Carlson paper?

It is similar.

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09:30:27	1	approved triglyceride lowering agents approved for very high
09:30:33	2	triglycerides as of March 2008. I want to turn to that now.
09:30:36	3	A Yes.
09:30:36	4	Q Did Lovaza show differential effects on LDL-C depending
09:30:41	5	on the baseline triglyceride levels of the patients?
09:30:44	6	A Yes, counsel.
09:30:45	7	MR. ELIKAN: Let's turn to PX 939.
09:30:52	8	This is the Lovaza statistical review which has
09:30:55	9	been pre-admitted, Your Honor, and the parties have stipulated
09:30:59	10	that it's prior art in paragraph 87?
09:31:04	11	THE COURT: Thank you.
09:31:04	12	BY MR. ELIKAN:
09:31:06	13	Q Do you understand this to be the statistical review that
09:31:09	14	was generated in conjunction with the development of Lovaza?
09:31:12	15	A I do, counsel.
09:31:13	16	Q I want to turn to page 5 and the first paragraph under
09:31:19	17	executive summary.
09:31:20	18	Do you see a reference to K85?
09:31:28	19	A Yes.
09:31:28	20	Q What is that?
09:31:29	21	A K85 is the something developmental designation for
09:31:29	22	Lovaza.
09:31:33	23	Q Is that the same thing as Omacor?
09:31:33	24	A Yes.
09:31:36	25	MR. ELIKAN: I want to look now at the next

paragraph in executive summary and can we highlight the first 09:31:38 2 two sentences. 09:31:42 09:31:42 3 BY MR. ELIKAN: What does the statistical review state were the 09:31:45 4 09:31:49 5 category 1 studies that were conducted as part of the review? Α It says, 09:31:53 7 "The efficacy of the 4-gram per day K85 is 09:31:53 09:31:58 8 based on eight double-blind, placebo-controlled, 9 randomized, parallel group studies or parts of study 09:32:02 that used K85 4-milligram dose per day. These 10 09:32:05 11 Category 1 studies included a eight week dose 09:32:14 12 response study, five European studies that had 09:32:16 09:32:20 13 dietary run-in phase, 9 or 10 weeks, and a 12-week 09:32:25 14 double-blind treatment phase, and two U.S. studies in 09:32:28 15 patients with severe hypertriglyceridemia," which they defined as triglycerides greater than or equal to 16 09:32:31 500. 09:32:34 17 09:32:34 18 So that's five European studies and two U.S. studies? 09:32:38 19 Yes, counsel. Α 09:32:39 20 MR. ELIKAN: Now, I want to turn to page 6, 21 Table 2. Can we highlight the entries for baseline 09:32:42 09:32:46 22 triglycerides for the treatment arms in the European and US 23 studies, Mr. Brooks. 09:32:51 09:32:51 24 BY MR. ELIKAN: 09:32:57 25 What were the baseline triglyceride levels for these two

09:33:01	1	groups?
09:33:01	2	A For the European group it was 275 milligrams per
09:33:05	3	deciliter, and for the United States group it was 816.
09:33:10	4	Q So was the US population a population of severely
09:33:15	5	hypertriglyceridemic patients?
09:33:18	6	A Yes.
09:33:18	7	Q Does the table report the percent change in both
09:33:23	8	triglycerides and LDL-C for these groups?
09:33:26	9	A Yes.
09:33:27	10	Q Have you prepared a slide that shows what these Lovaza
09:33:30	11	studies revealed about the different LDL-C effects of Lovaza
09:33:35	12	in patients with very high triglyceride, compared to the
09:33:38	13	patients with lower triglycerides?
09:33:40	14	A Yes, counsel.
09:33:41	15	MR. ELIKAN: Can we have PDX 6-8.
09:33:41	16	BY MR. ELIKAN:
09:33:45	17	Q And what does this illustrate about the effects of Lovaza
09:33:48	18	on LDL-C in these two groups?
09:33:51	19	A If we begin with the left-hand blue histogram, this
09:33:57	20	represented the high triglyceride group with median of 275.
09:34:04	21	Q So is that the European group?
09:34:06	22	A Yes. And what we find is that the LDL cholesterol
09:34:10	23	increased four-and-a-half percent compared to baseline or
09:34:16	24	6.9 percent compared to placebo.
09:34:17	25	And as we move to the right looking at the orange

histogram, these were the patients in the United States with 1 09:34:19 2 very high triglycerides median of 816 milligrams per 09:34:22 09:34:26 3 deciliter. You see there is a ten-fold higher increase in the 09:34:26 4 5 LDL-C compared to baseline at 44.15 percent or 49.3 percent 09:34:29 6 compared to placebo. 09:34:40 7 And what if anything does this show about the 09:34:41 09:34:43 8 relationship between LDL-C and patient baseline triglyceride levels? 9 09:34:51 That the two groups are very different in terms of how 10 09:34:51 11 they behave, with their LDL responses. 09:34:53 12 And in view of the earlier -- the experience with the 09:34:57 09:35:02 13 earlier approved triglyceride lowering agents, including 09:35:06 14 fibrates, to what would a person of ordinary skill in the art 15 have attributed the large rise on the right observed with 09:35:10 Lovaza as administered to patients with very high 16 09:35:15 09:35:19 17 triglycerides? 18 As an increase in conversion of VLDL to LDL. 09:35:19 And to what would they have attributed that? 19 09:35:24 20 You said VLDL to LDL, is that the metabolic pathway 21 that you described before? 22 Α Yes. 23 Would they have see that as part of the -- that's 24 specific to the drug that's administered, or is it more

generally part of the general way in which triglycerides are

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09:35:48	1	lowered?
09:35:48	2	A Well, because we see it with the niacin, the fibrates as
09:35:53	3	well as the Lovaza, it would have been seen as part of the
09:35:56	4	general means by which triglycerides and VLDLs are reduced
09:36:02	5	when using a drug.
09:36:05	6	Q So the metabolic pathway that we discussed, is that the
09:36:09	7	same thing as you also used the term of backlog I think or
09:36:13	8	a logjam.
09:36:14	9	MR. ELIKAN: Your Honor
09:36:14	10	THE WITNESS: Breaking the logjam.
09:36:17	11	BY MR. ELIKAN:
09:36:17	12	${\mathbb Q}$ Is that breaking the logjam phenomenon something that's
09:36:23	13	discussed in the literature existing in March 2008?
09:36:26	14	A Yes, widely discussed.
09:36:27	15	MR. ELIKAN: I want to go to PX 923. This is
09:36:32	16	the McKenney and Sica reference from 2007. It's been
09:36:38	17	pre-admitted, and, Your Honor, the parties have stipulated
09:36:41	18	that it's prior art in paragraph 85.
09:36:41	19	THE COURT: Thank you.
09:36:49	20	MR. ELIKAN: Can we go to page 3? We're there
09:36:51	21	already.
09:36:51	22	BY MR. ELIKAN:
09:36:52	23	${\mathbb Q}$ Looking at the title what's the general subject matter of
09:36:54	24	this paper?
09:36:55	25	A It's the prescription of omega-3 fatty acids for the

09:36:57 1 | treatment of hypertriglyceridemia.

MR. ELIKAN: Can we pull up page 5, and I want to highlight the first sentence of the paragraph that starts at the lower left-hand column.

## BY MR. ELIKAN:

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- Q What does McKenney have to say here in the first sentence of this paragraph?
- A Dr. Kennedy notes,

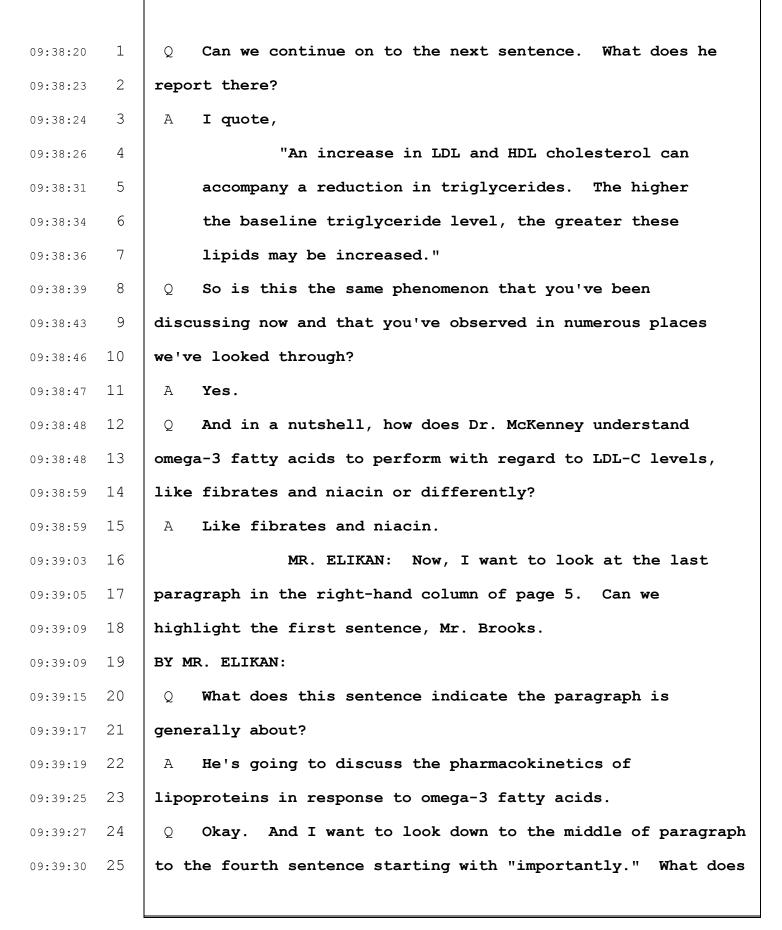
"The triglyceride reducing effects of EPA and DHA have been detailed in numerous studies among a wide range of patient types."

Q And looking a little further down this paragraph, but in the middle column of the same page, I want to highlight the first full sentence six lines down starting with "as with fibric acid derivatives."

What does Dr. McKenney state here about omega-3 fatty acids and how they compare to the earlier -- the other -- the drugs that you discussed earlier the fibric acid derivatives and nicotinic acid.

A He notes,

"As with fibric acid derivatives (fibrates) and nicotinic acid (niacin), reductions in triglycerides and very low density lipoprotein or VLDL are generally greater in patients with higher baseline triglyceride levels."



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Dr. McKenney report about the reports about the pharmacokinetic study on omega-3 fatty acids?

- A That the conversion of VLDL to LDL particles increased 93 percent under the influence of the omega-3 fatty acids.
- Q What does that mean in nutshell as far as your logjam analogy?
- A That means that the omega-3s break the logjam and increase the conversion of the VLDL to the LDL.
  - Q I want to highlight the rest of the paragraph now.

And as you what conclusion does Dr. McKenney draw about the consequence of this increased conversion of VLDL to LDL as far as LDL-C levels are concerned?

A He notes that,

"These results illustrate that the enhanced catabolism of triglycerides produced by the omega-3 fatty acids results in less secretion and more rapid removal of VLDL particles. The results also show that VLDL particles are rapidly converted to LDL particles, thus explaining why LDL cholesterol levels may rise in patients with very high triglycerides when given omega-3 fatty acid therapy."

- Q And can you explain what that is -- what he's saying there in less technical language.
- A Sure. He is saying that the omega-3 fatty acids decrease the secretion of VLDL particles, facilitate their removal from

09:41:10	1	serum, but also that for VLDLs in serum the omega-3 fatty
09:41:16	2	acids increase their rate of conversion to LDL, which is why
09:41:21	3	the LDL zooms up.
09:41:24	4	Q In your work on this case, did you review other
09:41:26	5	literature existing as of March 2008 that showed that omega-3s
09:41:34	6	increased the conversion rate of VLDLs to LDL?
09:41:39	7	A Yes.
09:41:39	8	MR. ELIKAN: Can we have PX 562.
09:41:42	9	And this, Your Honor, has been pre-admitted.
09:41:45	10	It's a 2006 article by Dr. Balk, and the parties have
09:41:51	11	stipulated that it is prior art and that's in paragraph 73.
09:41:58	12	THE COURT: Thank you.
09:41:58	13	BY MR. ELIKAN:
09:42:01	14	Q What does this reference concern?
09:42:02	15	A This is a paper published in Atherosclerosis in 2006 and
09:42:06	16	it's review article.
09:42:08	17	It evaluates the effects of omega-3 fatty acids on
09:42:13	18	serum markers of cardiovascular disease risk.
09:42:16	19	Q I want to turn to page 9, in the upper left-hand corner.
09:42:21	20	What does the final sentence of this paragraph, the one
09:42:24	21	beginning with "additionally," what does it state about the
09:42:27	22	mechanism of omega-3 fatty acids?
09:42:31	23	A It states,
09:42:32	24	"Additionally, there is some evidence that
09:42:34	25	omega-3 fatty acids increase the conversion rate of

VLDL to LDL, similar to fibrate drugs." 09:42:38 2 And is Balk in his review article saying the same or 09:42:43 3 something different from what we just saw in Dr. McKenney's 09:42:49 paper? 09:42:53 4 The same. 09:42:53 Α 6 And did you consider other prior art attributing the 09:42:53 7 increase in LDL-C seen in patients with very high 09:42:57 09:43:01 8 triglycerides as something that results from the conversion of VLDL to LDL? 9 09:43:05 Yes, counsel. 10 Α 09:43:07 11 Can we have PX 486, please. 09:43:08 MR. ELIKAN: 12 This is a Bays 2008 article, Dr. Bays is the 09:43:12 09:43:19 13 author, Prescription Omega-3 Fatty Acids, it's been 09:43:23 14 pre-admitted and the parties stipulated that it's prior art 09:43:27 15 that's in paragraph 69. BY MR. ELIKAN: 16 09:43:27 Dr. Toth very briefly what does this publication concern? 09:43:33 17 18 This publication looks at the impact of the omega-3 fatty 09:43:36 09:43:43 19 acids on lipid effects with emphasis on physiologic mechanisms 20 of action. 09:43:49 21 Let's go to page 10 and I want to MR. ELIKAN: 09:43:50 09:43:55 22 highlight the second to last sentence on page ten as well as 09:44:00 23 the next two sentence which carry over to page 12. 09:44:00 24 BY MR. ELIKAN: 09:44:05 25 In these two sentences, what does Dr. Bays report about Q

the effect of fibrates in omega-3 fatty acids on LDL-C? 1 09:44:10 2 "As with fibrates, the degree of LDL-C 09:44:17 Α 3 elevations observed with omega-3 treatment is 09:44:21 generally related to the pretreatment triglyceride 09:44:25 4 levels. Omega-3 fatty acids increase LDL cholesterol 5 09:44:27 6 levels the most in patients with the highest 09:44:32 7 pretreatment triglyceride levels. The reason for the 09:44:36 09:44:38 8 increased LDL cholesterol levels with omega-3 fatty 9 acids is related to the increased conversion of VLDL 09:44:44 particles to LDL particles." 10 09:44:48 11 Is this the same or a different phenomenon from what we 09:44:51 Q 12 saw in Dr. McKenney's paper and Dr. Balk's paper? 09:44:55 09:45:00 13 Α It's the same counsel. 09:45:01 14 Do you recall that Dr. Heinecke testified that some prior 15 art references showed that triglyceride-lowering agents 09:45:05 16 administered to patients who have elevated triglycerides, did 09:45:08 09:45:11 17 not have substantial increases in their LDL-C levels. Do you 09:45:18 18 recall that testimony? 09:45:19 19 Say that again, counsel. Do you recall that Dr. Heinecke testified that some prior 09:45:20 20 21 art references showed that triglyceride-lowering agents 09:45:24 09:45:28 22 administered to patients who have elevated triglycerides did 09:45:33 23 not have substantial increases in their LDL-C levels? 09:45:40 24 Α Yes. 09:45:40 25 Okay. Now, I want to focus not merely on elevated Q

triglycerides but on severe hypertriglyceridemia. 1 09:45:46 2 Would a person of ordinary skill in the art in 09:45:48 3 March 2008 have viewed the LDL-C effects of those agents in 09:45:53 patients with triglyceride levels below 500, as informative 09:45:59 4 about the LDL-C effects expected in patients with triglyceride 09:46:06 5 levels of at least 500? 6 09:46:10 7 Α No. 09:46:12 09:46:13 8 Q And why not? Well, we just reviewed some of the evidence here with 09:46:16 9 Lovaza, with niacin, with fenofibrate or fibrates, and the 10 09:46:19 11 populations below and above 500 clearly behave very 09:46:24 12 differently when it comes to the expected or observed change 09:46:30 in LDL cholesterol. 09:46:33 13 In putting this all together as of March 2008, did any 14 09:46:36 15 agents, any approved for severe hypertriglyceridemia, avoid 09:46:40 these increases in LDL-C? 16 09:46:46 09:46:48 17 Α They did not. 18 Do you recall that Dr. Heinecke testified that the LDL-C 09:46:50 increases with Lovaza and other triglyceride lowering agents 19 09:46:56 20 could be addressed by adding a statin which had been shown to 09:47:00 21 decrease LDL-C? 09:47:03 09:47:05 22 Α Yes. 23 Is it always possible to add a statin? 09:47:06 09:47:12 24 Well, it's not always possible to add a statin because Α 09:47:18 25 some patients are simply statin intolerant. This is

well-established in the literature.

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But even in some situations where you can add a statin, there may be those limitations as to what a patient can tolerate because of side effects.

And the other concern here is, and believe me, we do what we have to do, sure, we can add statins, but one of the biggest concerns with patients with severe hypertriglyceridemia is we saw that with Lovaza, with fibrates, these increases in LDL can approach 50 percent, but that's the average. It can be significantly higher than that if you look at the distribution of the values.

Currently available high dose high potency statins can reduce LDL about 55 percent. So if a patient did tolerate a high dose high potency statin and their LDL went up 50, 55 percent, you just burned all your statin lowering capacity just to get them back to baseline.

So it's not always possible for these different reasons, but we do the best we can.

Q Now, we've been discussing the -- triglyceride lowering agents that were approved as of 2008 substantially raised LDL-C in patients with very high triglycerides.

Beyond that drawback, did these approved triglyceride lowering agents have other draw backs?

- A Yes, side effects.
- O Let's talk about niacin. So other than the LDL-C

1	increase, what drawbacks did niacin have?
2	A Well, niacin was challenging to use because niacin could
3	induce head to toe flushing, which is where the small blood
4	vessels in the skin dilate and the patient actually looks red
5	because their skin is so engorged with blood from this
6	flushing.
7	This can result in a very intense sensation of heat,
8	itching, tingling. And for anyone who has experienced that at
9	2 in the morning, you might not want to do it again.
10	And niacin also was shown subsequently to increase
11	risk for some types of infection. So, yes, there were
12	drawbacks.
13	Q Would you say that niacin had a good side effect profile
14	or not so good?
15	A Not so good. And not that many, not a very high
16	percentage of patients could tolerate it.
17	Q Is that something you observed in your own practice?
18	A Yes.
19	Q And was that reflected in the prior art?
20	A Yes.
21	Q Let's go to PX 883.
22	And do you recognize PX 883?
23	A Yes, counsel.
24	Q What is it?
25	A It's Goodman & Gilman's, The Pharmacological Basis of
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

09:50:28	1	Therapeutics.
09:50:29	2	$\mathbb Q$ And if we look at the copyright date on page 2
09:50:34	3	A It's
09:50:35	4	Q When was it published?
09:50:36	5	A 1980.
09:50:38	6	${\mathbb Q}$ Could we look at the next page. And what is this
09:50:46	7	chapter?
09:50:47	8	A It's a chapter by Bob Levy on drugs used in the treatment
09:50:53	9	of hyperlipoproteinemias.
09:50:55	10	${\mathbb Q}$ We saw before a copyright date 1980, was this then
09:50:59	11	publically available as of March 2008?
09:51:02	12	A Most certainly.
09:51:07	13	MR. ELIKAN: We move to move PX 883 into
09:51:10	14	evidence.
09:51:10	15	MR. KLEIN: No objection.
09:51:11	16	THE COURT: PX 883 is admitted.
09:51:11 09:51:11	17	(Plaintiffs' Exhibit 883 received in evidence.)
09:51:11	18	MR. ELIKAN: Thank you, Your Honor.
09:51:16	19	Can we turn to page 8, the right-hand column
09:51:20	20	under untoward effects. Can we highlight the first three
09:51:20	21	sentences.
09:51:20	22	BY MR. ELIKAN:
09:51:29	23	Q What does?
09:51:30	24	A <b>He states</b> ,
09:51:31	25	"There are several untoward effects of

09:51:34	1	nicotinic acid that limit its usefulness. Notably,
09:51:39	2	the drug produces intense cutaneous flush and
09:51:44	3	pruritus. While these reactions"
09:51:45	4	Q Hold on one second. What's pruritus?
09:51:48	5	A Pruritus is itching of the skin.
09:51:51	6	Q Okay. I'm sorry.
09:51:53	7	A I'll spell it for the court reporter, p-r-u-r-i-t-i-s.
09:51:57	8	And I'll continue, counsel.
09:51:57	9	MR. ELIKAN: Thank you.
09:52:00	10	THE WITNESS: "While these reactions
09:52:01	11	decrease in intensity in most individuals after
09:52:05	12	they have been on therapy for several weeks, they
09:52:07	13	are unpleasant and result in poor patient
09:52:11	14	compliance."
09:52:11	15	BY MR. ELIKAN:
09:52:11	16	Q The author of this chapter Dr. Levy, who is or was he?
09:52:20	17	A He was a very prominent lipidologist at the National
09:52:24	18	Institutes of Health and he's also the same Dr. Levy of the
09:52:29	19	Levy-Fredrickson dyslipidemia classification.
09:52:32	20	${\tt Q}$ And it would include the Type V HLP that we looked at
09:52:38	21	earlier?
09:52:38	22	A Yes.
09:52:38	23	${\tt Q}$ I want to ask you about some of the other limitations. I
09:52:42	24	want to ask you now about limitations of fibrates.
09:52:45	25	In addition to LDL-C increases in patients with very

high triglycerides, did fibrates have other drawbacks? 1 09:52:50 2 09:52:53 Α Sure. 3 What were they? 09:52:54 Well, the fibrates, if you take the example of 09:52:55 4 gemfibrozil which was widely available prior to the priority 09:53:00 5 date, its biggest drawback was that it strongly interacted 6 09:53:06 7 with the statins. And by strongly interacted I mean it could 09:53:11 09:53:16 8 inhibit statin metabolism which could lead to a precipitous 9 rise in serum statin levels which could then precipitate the 09:53:21 most dreaded complication of statin therapy which is 10 09:53:26 11 rhabdomyolysis or what Dr. Fisher called Rhabdo. 09:53:30 12 And this is a diffuse dissolution of skeletal muscle 09:53:32 09:53:37 13 cells that could also result in acute renal failure. So this 09:53:41 14 was truly a medical emergency. But there were others, there could be elevation in 09:53:44 15 16 liver enzymes, there could be muscle aching. There were 09:53:46 09:53:49 17 multiple side effects? 18 MR. ELIKAN: I want to look back at PX 923, the 09:53:51 09:53:56 19 McKenney article. Could we have page 10 on the screen. And I 20 want to highlight the second sentence in the first full 09:53:59 21 paragraph in the middle column. 09:54:04 BY MR. ELIKAN: 09:54:04 2.2 09:54:09 23 What does Dr. McKenney say here about fibrates? 09:54:12 24 Fibrates can cause myopathy or injury to muscle and 09:54:16 25 rhabdomyolysis, and court reporter -- let me spell that.

09:54:20	1	R-h-a-b-d-o-m-y-o-l-y-s-i-s. And should be used in caution
09:54:28	2	with individuals at a high risk of these problems.
09:54:30	3	${\mathbb Q}$ He says fibrates in the plural. Is he limiting his
09:54:35	4	observation to gemfibrozil?
09:54:36	5	A No, counsel.
09:54:39	6	Q I want to turn now to Vascepa. Has Vascepa addressed the
09:54:43	7	limitations of these earlier products?
09:54:45	8	A Yes.
09:54:46	9	Q How?
09:54:46	10	A Vascepa was the first pharmacologic intervention in the
09:54:52	11	setting of severe hypertriglyceridemia which provided the
09:54:56	12	clinical meaningful reductions in triglycerides without
09:54:59	13	increasing LDL cholesterol, and it had a very favorable side
09:55:04	14	effect profile.
09:55:06	15	Q Can it be administered a statin?
09:55:09	16	A Yes.
09:55:10	17	Q None of the safety concerns that you spoke of moment ago.
09:55:17	18	A No.
09:55:18	19	Q I want to turn now to clinical trials involving Vascepa
09:55:21	20	starting with MARINE.
09:55:23	21	MR. ELIKAN: Can we turn to PX 807, the clinical
09:55:29	22	study report of MARINE.
09:55:30	23	And this was pre-admitted and the subject of
09:55:33	24	testimony by Dr. Ketchum, Your Honor.
09:55:35	25	THE COURT: Is this the MARINE study?

09:55:41	1	MR. ELIKAN: Yes.
09:55:42	2	THE COURT: Thank you.
09:55:43	3	MR. ELIKAN: It's indicated in last line of the
09:55:46	4	title.
09:55:46	5	BY MR. ELIKAN:
09:55:48	6	Q Turning to page 11 there's section titled Conclusions.
09:55:51	7	What does the first sentence say about the triglyceride levels
09:55:55	8	of the population studied?
09:55:59	9	A "In a population of patients with very high
09:56:01	10	triglycerides," which would be greater than 500
09:56:04	11	Q So that's the population that was studied, Doctor?
09:56:07	12	A Yes sir.
09:56:07	13	Q Okay. I want to highlight the last sentence of the first
09:56:11	14	paragraph of this section beginning with "in contrast."
09:56:14	15	A Yes.
09:56:14	16	Q What did the MARINE trial report about the effects of
09:56:19	17	Vascepa on LDL-C?
09:56:21	18	A "In contrast to other triglyceride lowering
09:56:23	19	agents, the reduction in triglyceride levels was not
09:56:26	20	associated with an elevation in LDL cholesterol
09:56:30	21	levels compared to placebo."
09:56:32	22	MR. ELIKAN: Now, I want to go to page 111, and
09:56:37	23	can we pull up table 29, Mr. Brooks, and highlight the title.
09:56:37	24	BY MR. ELIKAN:
09:56:43	25	Q And what does table 29 generally concern?

09:56:47	1	A This is a Summary of the Treatment Emergent Adverse
09:56:52	2	Effects of Interest By System Organ Class and Preferred Term
09:56:56	3	During the Double-Blind Treatment Period - Safety Population.
09:57:00	4	Q Do you see a column for AMR 101, 4 grams?
09:57:04	5	A Yes.
09:57:05	6	Q Do you recall what that refers to?
09:57:07	7	A Yes, AMR 101 would be the developmental designation for
09:57:12	8	Vascepa.
09:57:13	9	Q And in general, we don't need to go into the specific,
09:57:17	10	but in general what do the authors report here? What does the
09:57:21	11	study report show about how Vascepa, at four grams compared to
09:57:25	12	placebo in terms of adverse events?
09:57:28	13	A Very favorably. In fact, for multiple side effects,
09:57:34	14	numerically Vascepa had a lower rate for some sigh effects
09:57:38	15	than did placebo.
09:57:39	16	Q And following publication of the MARINE results, did you
09:57:43	17	begin to prescribe Vascepa for patients with very high
09:57:48	18	triglycerides?
09:57:48	19	A Yes.
09:57:49	20	Q Following announcements, announcement of the results of
09:57:54	21	the MARINE trial, have other clinicians recognized Vascepa as
09:58:00	22	an advance in the treatment of severe hypertriglyceridemia?
09:58:03	23	A Yes, counsel.
09:58:04	24	Q Let's turn to DX 1581. This is the O'Riordan article
09:58:11	25	previously admitted that Dr. Heinecke discussed. And I want

to turn to the second paragraph on page 1? 1 09:58:15 2 And what does that first sentence state had been 09:58:19 3 reported that very day. 09:58:24 That top line results of the MARINE trial, a randomized 09:58:25 4 placebo-controlled trial testing ethyl EPA in 229 patients 09:58:30 5 with triglyceride levels greater then or equal to 6 09:58:36 7 500 milligrams per deciliter were announced by the Amarin 09:58:39 09:58:42 8 corporation. 9 So it was the top line results announced that day? 09:58:43 10 Α Yes. 09:58:46 And what are top line results? 09:58:46 11 Q 12 Top line results would be the primary endpoint of the 09:58:49 Α 09:58:51 13 study. Does this mean that a full study report had been 09:58:52 14 15 published or is this something preliminary? 09:58:56 16 No it's customary to only announce the top line results 09:58:58 09:59:02 17 prior to publication in a peer review journal where the more 18 comprehensive report would be provided. 09:59:06 19 And in the next sentence of this paragraph, what had been 09:59:08 20 reported as far as the top line results are concerned? 09:59:12 21 That the 2 and 4-gram doses of Vascepa as the ethyl EPA 09:59:16 Α 09:59:23 22 is currently known -- well, it was AMR 101 at the time, 23 reduced triglyceride levels 20 and 33 percent respectively all 09:59:27 24 without a significant increase in LDL cholesterol levels. 09:59:32 25 I want to direct your attention to the paragraph 09:59:36 Q

09:59:38	1	immediately above that headed MARINE trial to quote from a
09:59:44	2	person named McGuire. Do we have that on the screen?
09:59:50	3	A Yes.
09:59:50	4	Q Who is McGuire?
09:59:53	5	A Dr. Daren McGuire is a prominent cardiologist at VT
09:59:55	6	Southwestern in Dallas.
09:59:55	7	Q And that's indicated in the paragraph immediately above?
09:59:59	8	A Yes.
10:00:00	9	Q In the paragraph that we were looking at right above the
10:00:04	10	heading MARINE trial, what did Dr. McGuire have to say in this
10:00:10	11	statement?
10:00:10	12	MR. KLEIN: Objection, Your Honor. I'll object
10:00:12	13	on hearsay. To the extent they're not offering it for the
10:00:16	14	truth of the matter asserted therein, I'm okay. But it's
10:00:21	15	obviously hearsay.
10:00:22	16	THE COURT: Well, the document is already
10:00:24	17	admitted, isn't it?
10:00:26	18	MR. KLEIN: The document is admitted, but to the
10:00:29	19	extent he's asking specific questions about the comments, the
10:00:33	20	statements from someone else, I just want to clarify for the
10:00:38	21	record that we object on hearsay grounds to that type of
10:00:43	22	testimony.
10:00:44	23	THE COURT: Counsel, what's your response?
10:00:46	24	MR. ELIKAN: Well, Your Honor, I believe
10:00:49	25	Dr. Heinecke discussed statements in this same article and

10:00:54	1	there was no issue with defendants' put being forward those
10:00:58	2	statements. The document is already been admitted.
10:01:00	3	THE COURT: I'm assuming you're just
10:01:03	4	highlighting the statement.
10:01:04	5	MR. ELIKAN: Correct.
10:01:05	6	THE COURT: In other words you're not going to
10:01:06	7	go into details what the statement means. You're just asking
10:01:08	8	him to read
10:01:08	9	MR. ELIKAN: I'm going to go into detail.
10:01:10	10	THE COURT: You are or are not?
10:01:12	11	MR. ELIKAN: Yes, I am but not after offering it
10:01:14	12	for the truth of the matter asserted.
10:01:16	13	THE COURT: Then there's no that would
10:01:17	14	resolve any objection.
10:01:18	15	MR. KLEIN: Yes.
10:01:19	16	MR. ELIKAN: I think it would.
10:01:20	17	THE COURT: All right.
10:01:20	18	BY MR. ELIKAN:
10:01:24	19	${\mathbb Q}$ So in the paragraph right above the heading MARINE Trial,
10:01:28	20	what did Dr. McGuire have to say here?
10:01:32	21	A He notes,
10:01:32	22	"At the end the day, if you can have
10:01:34	23	favorable cardiovascular effects without raising LDL
10:01:39	24	cholesterol, that's going to be an advantage.
10:01:41	25	There's a lot of enthusiasm for this compound, but

10:01:45	1	this it really early in development and I would
10:01:48	2	insert a note of caution here the early results are
10:01:51	3	intriguing."
10:01:52	4	Q And how do you understand this statement the early
10:01:55	5	reports are intriguing?
10:01:56	6	A Well, the full report hadn't been published yet. He's
10:02:01	7	responding to the top line results which he finds intriguing.
10:02:04	8	Q And how do you understand his statement about the need
10:02:06	9	for a dose of caution?
10:02:08	10	A Because he wants to see the full report. He wants to see
10:02:12	11	if there's any side effects. He wants to see exactly what
10:02:16	12	happened to the full range of the lipid profile.
10:02:18	13	Q And turning to the next page, let's look at the paragraph
10:02:24	14	starting with Dr. Steven Nissen. Do you see that, Doctor?
10:02:29	15	A I do.
10:02:30	16	Q Who is Dr. Steven Nissen.
10:02:32	17	A Steve was the former chief of the cardiology at the
10:02:35	18	Cleveland Clinic in Cleveland Ohio.
10:02:38	19	Q Now, the last sentence notes that and I quote,
10:02:42	20	"'The semi synthetic ethyl EPA which does not
10:02:48	21	include DHA in the formulation and has no effect on
10:02:51	22	LDL cholesterol levels is a real advance in the
10:02:54	23	treatment of elevated triglycerides,' he told Heart
10:02:57	24	Wire."
10:02:58	25	How do you understand his statement that Vascepa

10:03:00	1	is a real advance in the treatment of elevated triglycerides?
10:03:04	2	A Because this hadn't been shown before. Steve is a
10:03:07	3	clinical trialist. He knew the landscape and he's just
10:03:12	4	acknowledging excitement over a development where no one had
10:03:21	5	previously found a solution.
10:03:23	6	Q What are you referring to, to the development that nobody
10:03:26	7	had found a solution to?
10:03:27	8	A The Vascepa being able to reduce triglycerides in
10:03:30	9	patients with severe hypertriglyceridemia without raising LDL.
10:03:34	10	Q Now, in the first sentence, Dr. Nissen noted some caveats
10:03:43	11	about trial size and duration of the MARINE trial about which
10:03:47	12	Dr. Heinecke testified as well as the lack of peer review. Do
10:03:51	13	you recall Dr. Heinecke's testimony about this?
10:03:53	14	A Yes.
10:03:53	15	Q I want to look at those caveats now.
10:03:56	16	Did FDA proceed to approve Vascepa for very high
10:04:01	17	triglycerides based on the MARINE trial, irrespective of
10:04:07	18	Dr. Nissen's concerns?
10:04:08	19	A Yes.
10:04:08	20	Q They didn't have an issue with the sample size?
10:04:10	21	A No.
10:04:11	22	Q Or its study design?
10:04:13	23	A No. If they did they wouldn't have approved it.
10:04:16	24	Q And how did the sample size of the MARINE trial compare
10:04:20	25	to the number of subjects that received EPA in the Mori

10:04:25	1	reference that Dr. Heinecke discussed in his testimony?
10:04:29	2	A There are three-and-a-half to four times as many patients
10:04:32	3	per group.
10:04:33	4	Q And how does the number of subjects in MARINE compare to
10:04:37	5	the number of subjects in Hayashi?
10:04:41	6	A It's significantly greater.
10:04:43	7	Q Let's talk about peer review. At the time the article
10:04:48	8	was published, I think we already covered this, but had this
10:04:54	9	been published in a peer review journal?
10:04:57	10	A Not yet.
10:04:58	11	Q At a later juncture did the final results, were the final
10:05:02	12	results published in a peer review publication?
10:05:05	13	A Yes, in the American Journal of Cardiology.
10:05:09	14	${\mathbb Q}$ Turning to the next paragraph of this article what did
10:05:14	15	Dr. Nissen have to say about Vascepa?
10:05:16	16	A He notes,
10:05:19	17	"It gives you all the benefit without the
10:05:21	18	downside. It's an interesting wrinkle, there's still
10:05:24	19	room for small companies to do innovative things in
10:05:27	20	this field."
10:05:27	21	Q And how do you understand his statement that Vascepa
10:05:30	22	gives you all the benefits without the downside?
10:05:30	23	A That it dropped the triglycerides without raising the
10:05:33	24	LDL.
10:05:34	25	Q Since Vascepa entered the market has there been other

10:05:39	1	recognition among clinicians that Vascepa lowers triglyceride
10:05:43	2	in patients with very high triglycerides without substantially
10:05:46	3	raising LDL-C or causing serious side effects?
10:05:50	4	A Yes counsel.
10:05:51	5	Q Have you prepared a slide summarizing some of that
10:05:54	6	recognition?
10:05:54	7	A Yes.
10:05:55	8	MR. ELIKAN: Can we have PDX 6-9, please.
10:05:55	9	BY MR. ELIKAN:
10:05:59	10	Q And before we talk about the contents, can you identify
10:06:02	11	the exhibits referenced in the slide.
10:06:05	12	A Yes, there are two manuscripts the first is by Fialkow,
10:06:12	13	F-i-a-l-k-o-w, published in 2006 in the American Journal of
10:06:17	14	Cardiovascular Drugs and this is PX 852.
10:06:21	15	Q Doctor, you said 2006 or at least that's what I heard.
10:06:24	16	A 2016.
10:06:27	17	Q That's PX 582?
10:06:33	18	A Yes.
10:06:34	19	Q And on the right?
10:06:36	20	A One on the right published by Castaldo 2016 in Drugs and
10:06:43	21	Therapy Perspective, and this PX 866.
10:06:44	22	Q Did you review each of these articles and rely on them in
10:06:48	23	forming your opinions?
10:06:49	24	A Yes.
10:06:49	25	MR. ELIKAN: We move for admission PX 852 and

866. 1 10:06:53 2 No objection. 10:06:53 MR. KLEIN: 3 THE COURT: 852 and 866 are admitted. 10:06:54 (Plaintiffs' Exhibits 852 and 866 10:06:54 4 received in evidence.) 10:06:54 BY MR. ELIKAN: 5 10:06:54 6 I want to walk through now what each of these articles 10:06:59 7 say about Vascepa. Can you do that for us starting with 10:07:03 10:07:07 8 Fialkow. 9 Dr. Fialkow notes, 10:07:07 Yes. "Use of products containing both DHA and EPA 10 10:07:07 also require periodic monitoring of LDL-C during 10:07:15 11 12 therapy due to the potential for increases in this 10:07:17 10:07:20 13 lipid parameter while treatment with the EPA only 14 product, icosapent ethyl or Vascepa has no LDL-C 10:07:24 15 monitoring requirement." 10:07:28 And Castaldo? 16 10:07:29 Q 17 Α Dr. Castaldo notes, 10:07:31 "Switching statin add-on therapy from 10:07:33 18 19 fenofibrates to icosapent ethyl or Vascepa maintained 10:07:37 or improved the lipid profile and was well-tolerated 10:07:40 20 with no adverse reactions in a series of patients 21 10:07:43 10:07:47 2.2 with hypertension and high cardiovascular risk. 23 Important differences between icosapent ethyl and 10:07:50 10:07:53 24 other add-on therapy options include its good safety 10:07:57 25 and tolerability profile and the fact that it does

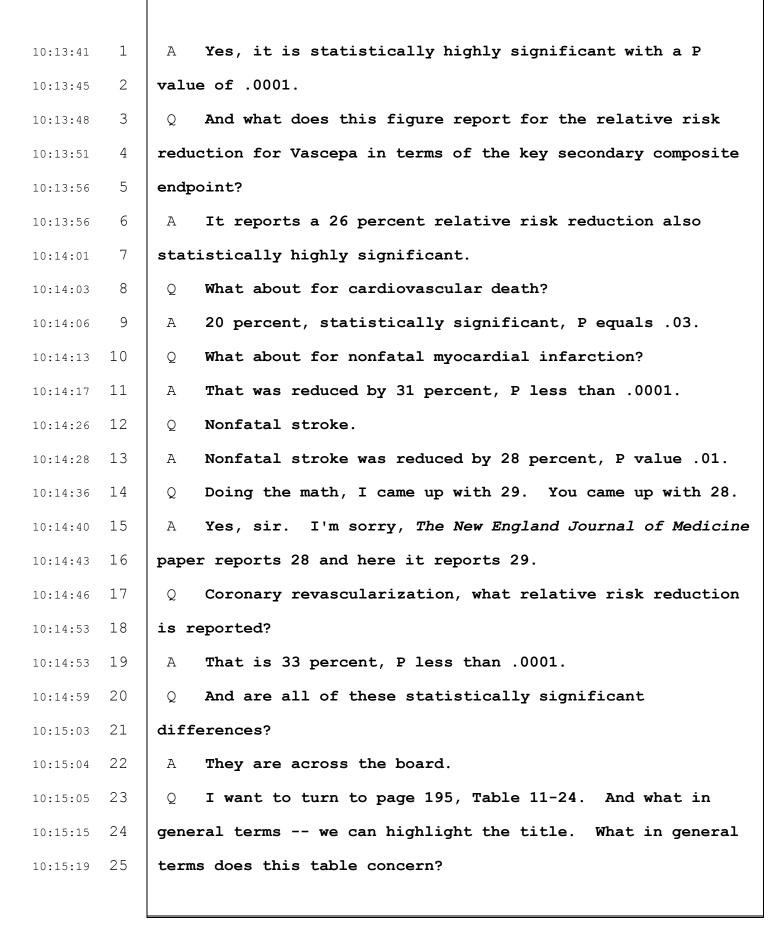
10:08:00	1	not increase LDL-C levels as supported by clinical
10:08:05	2	studies and the icosapent ethyl or Vascepa product
10:08:08	3	label."
10:08:08	4	${\mathbb Q}$ And tying these two articles together, what are the
10:08:13	5	authors saying here about the effect of Vascepa, if any, on
10:08:17	6	LDL-C in patients with very high triglycerides?
10:08:20	7	A It's neutral.
10:08:22	8	Q And by neutral, do you mean that it doesn't raise LDL-C?
10:08:31	9	A Yes, and hence, does not require monitoring.
10:08:35	10	Q Are the statements in these articles, to your view an
10:08:38	11	accurate reflection of the views of the medical community
10:08:43	12	about the effects of Vascepa on LDL-C?
10:08:45	13	A Yes, this was widely acknowledged.
10:08:48	14	Q Since you began prescribing Vascepa to patients has an
10:08:52	15	additional clinical trial provided further reasons for you to
10:08:57	16	prescribe Vascepa to your patients?
10:08:58	17	A Yes.
10:08:59	18	Q What trial?
10:09:00	19	A REDUCE-IT.
10:09:01	20	MR. ELIKAN: Can we have PX 1189.
10:09:08	21	And, Your Honor, this was previously admitted
10:09:11	22	with Dr. Ketchum it's the REDUCE-IT clinical study report.
10:09:13	23	Let's turn to page 135 and I want to look at the
10:09:17	24	paragraph at the bottom.
10:09:17	25	

10:09:17	1	BY MR. ELIKAN:
10:09:19	2	Q There's reference to Figure 11-3 in that paragraph, do
10:09:27	3	you see that?
10:09:27	4	A I do.
10:09:29	5	Q What does it say about Figure 3?
10:09:33	6	A This is
10:09:33	7	Q What information does this paragraph say is contained in
10:09:37	8	Figure 11-3?
10:09:38	9	A "A forest plot of the analyses of the
10:09:41	10	individual components of the primary and key
10:09:41	11	secondary endpoints, each analyzed as independent
10:09:49	12	endpoints namely time to first occurrence of nonfatal
10:09:51	13	myocardial," or heart attack, "regardless of the time
10:09:54	14	to first occurrence of any other endpoints for the
10:09:57	15	same patient) is presented."
10:09:59	16	Q So all of that is in Figure 11-3?
10:10:01	17	A Yes.
10:10:04	18	MR. ELIKAN: Let's see how primary and secondary
10:10:11	19	endpoints are defined. Can we turn to page 131 under the
10:10:15	20	heading Primary Endpoint Analysis.
10:10:15	21	BY MR. ELIKAN:
10:10:18	22	Q What does it state about how the primary composit
10:10:22	23	endpoint was defined.
10:10:26	24	A It included five components, cardiovascular death,
10:10:29	25	nonfatal MI including silent MI.

10:10:32	1	Q That's a heart attack, MI?
10:10:34	2	A Yes, sir. EKGs were performed annually for the detection
10:10:40	3	of silent MIs or heart attacks, nonfatal stroke, coronary
10:10:46	4	revascularization would be lack stinting or bypass and
10:10:48	5	unstable angina determined do be caused by myocardial ischemia
10:10:54	6	by invasive-noninvasive testing and requiring emergent
10:10:59	7	hospitalization.
10:11:00	8	Q So all of those together are the primary endpoint?
10:11:03	9	A Yes.
10:11:03	10	Q Now, let's turn to page 134 under 11.4.1.2. What does
10:11:11	11	this indicate and we can highlight the first sentence
10:11:14	12	about how the key the secondary endpoint was defined, the
10:11:21	13	key secondary composit endpoint.
10:11:23	14	A The key secondary composite endpoint was from the time
10:11:28	15	from randomization to the first occurrence of the composite of
10:11:32	16	cardiovascular death, nonfatal MD or heart attack, including
10:11:35	17	silent MI, or nonfatal stroke.
10:11:43	18	Q And with those definitions in mind, let's turn to
10:11:47	19	Figure 11-3 on page 137, the forest plot.
10:11:54	20	Do you understand this graph to be presenting a
10:11:57	21	comparison of the relative risk of cardiovascular events in
10:12:01	22	patients taking Vascepa and a statin as compared to patients
10:12:06	23	who were just taking a placebo and statin?
10:12:09	24	A Yes, counsel.

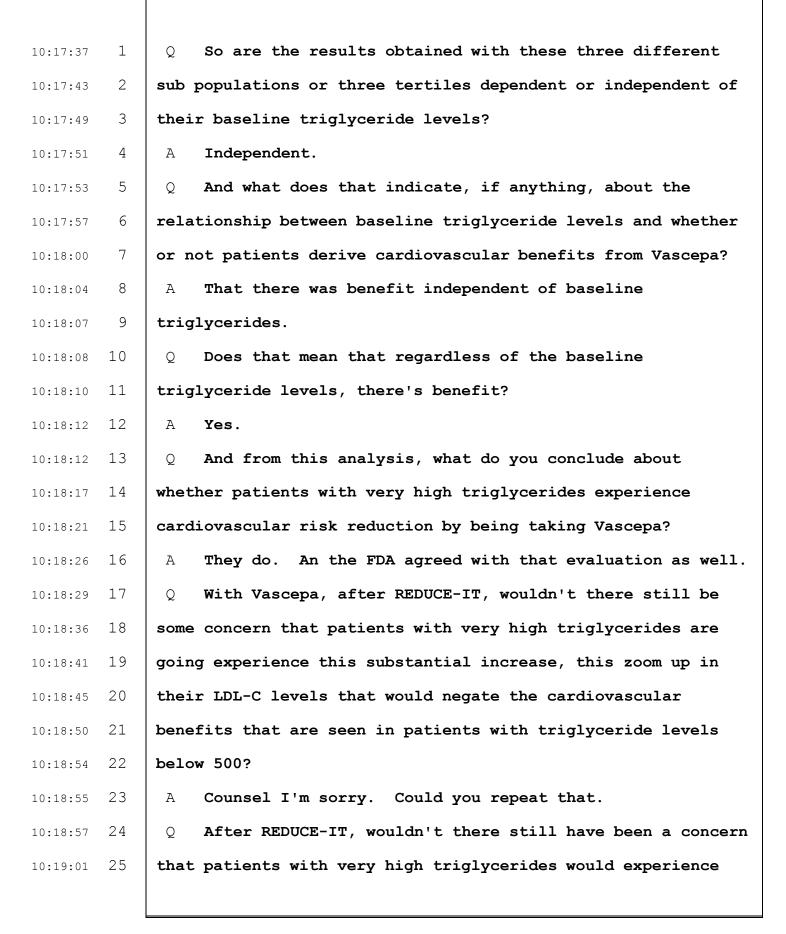
10:12:09 25 Q Let's run through this table quickly.

10:12:12	1	Looking at this figure, how did Vascepa compare to
10:12:16	2	placebo in terms of the primary composite endpoint?
10:12:20	3	A Well, the primary composite endpoint was reduced by
10:12:25	4	25 percent. You notice that as we go across the figure, 705
10:12:30	5	people sustained a component of the primary composite endpoint
10:12:36	6	in the Vascepa group versus 901. And those are the data used
10:12:40	7	to calculate that hazard ratio.
10:12:42	8	Q Is that percentages afterwards?
10:12:44	9	A Yes.
10:12:45	10	Q So
10:12:46	11	A So the .75 arises from seven
10:12:50	12	Q Before we get to the .75, what is the percentage that the
10:12:56	13	705 over 4089 represents and what do we see as the percentage
10:12:59	14	in placebo?
10:13:02	15	A That ratio would constitute the hazard ratio.
10:13:05	16	Q Okay. The 17.2 and the 22 percent together?
10:13:11	17	A Yes.
10:13:11	18	Q Okay. Explain what a hazard ratio is.
10:13:15	19	A A hazard ratio compares the incidence of an endpoint in
10:13:20	20	the treatment arm compared to the placebo group.
10:13:22	21	Q And how is the hazard ratio here related to relative risk
10:13:29	22	reduction?
10:13:29	23	A Well, in general, it would be one minus .75, or 25
10:13:38	24	percent.
10:13:38	25	Q So is this a 25 percent relative risk reduction?
		$\mathbf{I}$



10:15:20	1	A This looks at stratified analysis of time to the primary
10:15:24	2	endpoint from date of randomization by baseline triglyceride
10:15:28	3	tertiles.
10:15:28	4	
10:15:29	5	So what they did was they split the REDUCE-IT cohort
10:15:34	6	into thirds or tertiles to analyze different cut points on the
10:15:40	7	triglycerides.
10:15:41	8	Q And what are the triglyceride ranges for each of the
10:15:45	9	tertiles in the table?
10:15:46	10	A 81 to less than 190.
10:15:48	11	Q That's for the TG lowest tertile?
10:15:51	12	A Yes, the lowest tertile. The middle tertile was greater
10:15:55	13	than 190 to less than 0 equal to 250.
10:15:59	14	And the highest triglyceride tertile at baseline was
10:16:03	15	greater than 250 to less than 1401.
10:16:06	16	Q Did the third tertile then contain patients with
10:16:09	17	triglycerides over 500?
10:16:11	18	A Yes.
10:16:11	19	Q Does the table report the hazard ratio for each of the
10:16:15	20	tertiles?
10:16:15	21	A It does.
10:16:16	22	Q And looking at the first tertile, do you see a hazard
10:16:23	23	ratio of?
10:16:24	24	A 21.
10:16:26	25	Q That's the relative risk reduction.

```
Yes, I'm sorry.
10:16:28
         2
              Q
                  Hazard --
10:16:29
         3
              Α
                  Hazard ratio, .79.
10:16:30
                  Sorry, Doctor?
10:16:34
         4
              Q
                   .79.
         5
              Α
10:16:35
                  Thank you.
10:16:36
         6
              0
         7
                        Looking at the second tertile, does the hazard ratio
10:16:37
10:16:41
        8
             remain essentially flat or what happens there?
       9
                   It's flat. It's .80.
10:16:43
                  And in the third tertile, do you see a hazard ratio of
10:16:46 10
        11
             .67?
10:16:51
10:16:52 12
              Α
                  Yes.
10:16:52 13
                  And what does that mean in terms of relative risk
10:16:55 14
             reduction?
10:16:56 15
                   That would be about 32.5 percent.
10:17:00 16
                 And are each of these results statistically significant?
              Q
10:17:04 17
              Α
                  They are all statistically significant.
10:17:07 18
                  And what does this table show about the relationship
             between the triglyceride levels and cardiovascular risk
10:17:10 19
10:17:13 20
             reduction between and among these different tertiles?
       21
                   Well, if you look at the P value in upper right corner
10:17:16
10:17:20 22
             it's .33 which is not statistically significant so the
10:17:24 23
             conclusion here is that the benefit in each of these tertiles
10:17:28 24
                             There isn't a greater benefit in the highest
             was the same.
10:17:33 25
             tertile, but all three tertiles do manifest benefit.
```



10:19:06	1	this substantial increase in LDL-C that would negate the
10:19:12	2	cardiovascular benefits that were seen in patients were
10:19:15	3	triglyceride levels below 500?
10:19:18	4	A No. And we clearly did not observe that in the REDUCE-IT
10:19:21	5	trial.
10:19:23	6	Q And what, if anything did MARINE have to say about
10:19:26	7	whether that would occur in the 500 and above population?
10:19:31	8	A MARINE showed that that would not occur.
10:19:34	9	Q Have the results been published in a peer reviewed
10:19:47	10	publication?
10:19:48	11	A For REDUCE-IT?
10:19:49	12	Q For REDUCE-IT.
10:19:50	13	A Yes.
10:19:51	14	MR. ELIKAN: Can we have PX 272.
10:19:57	15	This is the has been previously admitted.
10:20:00	16	It's the publication by Dr. Bhatt and others.
10:20:04	17	THE COURT: Thank you.
10:20:05	18	MR. ELIKAN: Can we turn to page 10, figure 4.
10:20:05	19	BY MR. ELIKAN:
10:20:13	20	Q And what's presented here in general terms.
10:20:15	21	A This is once again a depiction of the endpoint analysis
10:20:19	22	from the REDUCE-IT trial.
10:20:23	23	MR. ELIKAN: And I want to direct your attention
10:20:24	24	to a passage on page 10 in the lower left hand corner. Can we
10:20:30	25	highlight the sentence "in addition the significantly lower

risk." 1 10:20:34 2 BY MR. ELIKAN: 10:20:34 3 What do Dr. Bhatt and his fellow authors have to say 10:20:40 here? 10:20:47 4 I quote, 10:20:47 5 Α "In addition the significantly lower risk of 6 10:20:47 7 major adverse cardiovascular events with icosapent 8 ethyl than with placebo appeared to occur 9 irrespective of the attained triglyceride level at 10 one year whether it's greater than or equal to 150 or 11 less than 150 milligrams per deciliter, which 12 suggests that the cardiovascular risk reduction was 13 not associated with attainment of a more normal 10:21:13 14 triglyceride level." 15 So what, if anything does this have to say about whether 10:21:13 patients with very high triglycerides experience 10:21:17 16 10:21:21 17 cardiovascular risk reduction? 18 That it didn't matter what your baseline triglyceride 10:21:25 level was and, moreover, even if you didn't normalize your 19 10:21:29 20 triglycerides in a trial, you still derive a benefit. 10:21:33 21 In your opinion, will these results from the REDUCE-IT 10:21:37 10:21:43 2.2 trial have real world implications in the practice of 10:21:47 23 medicine? 10:21:47 24 They are tremendous real world value in the practice of 25 the medicine, yes. 10:21:52

10:21:53	1	Q Explain.
10:21:54	2	A REDUCE-IT proved that when you take patients already on a
10:22:02	3	statin and these patients have remarkably well-controlled
10:22:07	4	LDL, with a mean baseline level of 75, median of 65, and if
10:22:15	5	they have hypertriglyceridemia above 150, there were
10:22:20	6	remarkable reductions in risk in all cardiovascular endpoints
10:22:25	7	evaluated.
10:22:26	8	This is a first in clinical trials looking at the
10:22:32	9	use of an adjunct therapy over and above statin in any patient
10:22:38	10	population not just high triglycerides.
10:22:41	11	Q And will it have real word implications in treating
10:22:45	12	patients with severe hypertriglyceridemia?
10:22:47	13	A Absolutely.
10:22:48	14	Q You said, I believe, that no triglyceride lowering agent
10:23:00	15	had ever shown these cardiovascular benefits on top of statin
10:23:04	16	therapy; is that right?
10:23:05	17	A That's correct.
10:23:06	18	Q Had any approved triglyceride lowering agent shown such
10:23:06	19	cardiovascular benefits in patients with very high
10:23:13	20	triglycerides?
10:23:13	21	A No, counsel.
10:23:14	22	Q And how is the medical community responded to the
10:23:19	23	REDUCE-IT trial results?
10:23:21	24	A With considerable enthusiasm.
10:23:25	25	Q And has that enthusiastic response been has it been

10:23:30	1	reflected in the medical and other literature?
10:23:33	2	A Yes.
10:23:33	3	Q And did you review some of that literature for your work
10:23:36	4	in this case?
10:23:36	5	A I did.
10:23:38	6	MR. ELIKAN: Let's turn to PX 959.
10:23:38	7	BY MR. ELIKAN:
10:23:43	8	Q What is PX 959, Doctor?
10:23:46	9	A It's the editorial by John Kastelein and Erik Stroes that
10:23:46	10	accompanied publication of the REDUCE -IT trial in the New
10:23:58	11	England Journal of Medicine.
10:23:58	12	Q Did you rely on it in forming your opinions?
10:24:01	13	A Yes.
10:24:03	14	MR. ELIKAN: We move for admission of PX 959.
10:24:07	15	MR. KLEIN: No objection.
	16	THE COURT: 959 is admitted.
	17	(Plaintiffs' Exhibit 959 received in
	18	evidence.) BY MR. ELIKAN:
	19	Q Let's look at a few passages from this editorial. I'm
10:24:17	20	going to direct your attention to the last paragraph in the
10:24:17	21	left-hand column of the first page, continuing on to the
10:24:21	22	right-hand column.
10:24:24	23	In the first sentence the one beginning "we
10:24:27	24	welcome," how did the authors respond to the REDUCE-IT
10:24:31	25	results?

10:24:32	1	A Drs. Kastelein and Stroes noted "we welcome these results
10:24:38	2	with surprise, speculation, and hope."
10:24:39	3	Q And what do they say was surprising?
10:24:42	4	A "Most surprising was the difference between
10:24:44	5	the results of REDUCE-IT and those of many previous
10:24:47	6	trials of omega-3 fatty acids. A meta-analysis of
10:24:52	7	ten randomized trials involving 78,000 patients did
10:24:57	8	not show that the groups that received omega-3 fatty
10:25:01	9	acids had a lower risk of major adverse
10:25:03	10	cardiovascular events than those receiving placebo,
10:25:06	11	nor did ASCEND," the acronym stands for A Study of
10:25:12	12	Cardiovascular Events in Diabetes, "which tested one
10:25:15	13	gram capsules containing 840 milligrams of Marine
10:25:19	14	omega-3 fatty acids daily in patients, with type 2
10:25:22	15	diabetes."
10:25:28	16	Q You mentioned a meta-analysis.
10:25:31	17	A Yes.
10:25:31	18	Q What's that?
10:25:32	19	A Well, a meta-analysis is a statistical tool that's used
10:25:37	20	to evaluate complex medical issues where perhaps clinical
10:25:43	21	trials have had difficulty showing a benefit.
10:25:46	22	The advantage of a meta-analysis is that it can take
10:25:49	23	large numbers of patients from many different trials and
10:25:53	24	combine them and come up with an answer, hopefully.
10:25:59	25	MR. ELIKAN: Let's look at one more passage in

10:26:01	1	this editorial. Can we pull up the last paragraph of the
10:26:05	2	article on page 2 and highlight the first sentence.
10:26:05	3	BY MR. ELIKAN:
10:26:09	4	Q What do the authors note here?
10:26:12	5	A They conclude,
10:26:13	6	"After a parade of failed cardiovascular
10:26:16	7	outcome trials of fish oils, REDUCE-IT has shown a
10:26:19	8	substantial benefit with respect to major adverse
10:26:21	9	cardiovascular events."
10:26:22	10	Q And I want to zero in on that phrase "parade of failed
10:26:28	11	cardiovascular trials of fish oils." What do you understand
10:26:32	12	the authors to mean by the "parade of failed cardiovascular
10:26:36	13	outcome trials of fish oils"?
10:26:38	14	A Well, we've seen a large number of prospective randomized
10:26:42	15	clinical trials using the omega-3s which have failed.
10:26:46	16	Q Did you review other commentary elsewhere expressing
10:26:51	17	surprise and enthusiasm for the REDUCE-IT results?
10:26:55	18	A Yes, counsel.
10:26:55	19	Q Let's turn to PX 875.
10:26:59	20	What is PX 875?
10:27:01	21	A This is an article by Ben Fidler published in September
10:27:08	22	of 2018 entitled, "Amarin Soars As Fish Oil Pill Cuts Risk of
10:27:13	23	Strokes in Long Awaited Study."
10:27:15	24	Q And did you rely on it in forming your opinions?
10:27:18	25	A Yes.

10:27:20	1	MR. ELIKAN: We move for admission of PX 875.
10:27:23	2	MR. KLEIN: No objection.
10:27:23	3	THE COURT: 875 is admitted.
10:27:23	4	(Plaintiffs' Exhibit 875 received in evidence.)
10:27:23 10:27:28	5	MR. ELIKAN: If we can turn to page 2 and let's
10:27:30	6	a pull up the third and fourth paragraphs.
10:27:30	7	BY MR. ELIKAN:
10:27:32	8	Q Do you see a reference to Dr. Norman Lepor?
10:27:36	9	A Yes.
10:27:36	10	Q Who is that?
10:27:37	11	A Norm is a cardiologist at Cedars-Sinai Heart Institute at
10:27:37	12	UCLA in LA.
10:27:45	13	Q Is he someone you know?
10:27:47	14	A Yeah.
10:27:47	15	Q Well-regarded?
10:27:47	16	A Oh, yeah.
10:27:48	17	Q Do you see that he says the data are a game changer?
10:27:52	18	A Yes.
10:27:52	19	Q What do you understand him to be referring to by the
10:27:56	20	data, that is, what data is he describing as a game changer?
10:28:01	21	A The REDUCE-IT trial.
10:28:04	22	Q And looking at the next paragraph, what else does
10:28:08	23	Dr. Lepor have to say?
10:28:09	24	A Norm says, "The results will impact how I treat patients
10:28:13	25	starting tomorrow."

10:28:14	1	MR. ELIKAN: Let's go to page 3 and pull up the
10:28:18	2	top paragraph.
10:28:18	3	BY MR. ELIKAN:
10:28:21	4	Q What else does Dr. Norman Lepor at Cedars-Sinai have to
10:28:27	5	say about REDUCE-IT and Vascepa at the top of the page?
10:28:30	6	A Dr. Lepor says,
10:28:31	7	"The REDUCE-IT results confirm that Vascepa
10:28:34	8	has unique characteristics that will not allow me to
10:28:38	9	extrapolate the results from this trial to other
10:28:41	10	prescribed or over-the-counter fish oils."
10:28:45	11	Q Are there other examples in the literature, commenting on
10:28:49	12	the REDUCE-IT results?
10:28:50	13	A Yes.
10:28:50	14	Q And have you prepared a slide summarizing some of that
10:28:54	15	commentary?
10:28:55	16	A Yes.
10:28:56	17	MR. ELIKAN: Can we have PDX 6-10.
10:28:56	18	BY MR. ELIKAN:
10:29:00	19	Q Can you identify the exhibits referenced in this slide?
10:29:04	20	A Sure. The first is one which quotes Dr. Michael Blaha,
10:29:10	21	in the New York Times dated September 2018 and it's PX 0952.
10:29:17	22	The second is one quoting Dr. Prakash, that's
10:29:21	23	P-r-a-k-a-s-h, Deedwania, D-e-e-d-w-a-n-i-a, and this was in
10:29:31	24	Chest Physician in November of 2018 and this is PX 0902.
10:29:37	25	The third is one by Dr. Michael Shapiro,

10:29:41	1	S-h-a-p-i-r-o, this was a conference call on cardiovascular
10:29:46	2	drugs in December 2018 and it is PX 0714?
10:29:54	3	MR. ELIKAN: Your Honor, we move for admission
10:30:00	4	of PX 952, 902 and 714 into evidence.
10:30:01	5	MR. KLEIN: No objection, Your Honor. I think
10:30:02	6	there's an agreement these statements are not being moved in
10:30:05	7	for the truth of the matter asserted therein. If that's
10:30:08	8	correct, then no objection.
10:30:09	9	THE COURT: Is that correct, counsel?
10:30:11	10	MR. ELIKAN: Yes.
10:30:12	11	THE COURT: All right. With that qualification,
10:30:14	12	the three exhibits are admitted, 952, 902 and 714.
10:30:14	13	(Plaintiffs' Exhibits 952, 902 and 714
10:30:14	14	received in evidence.) BY MR. ELIKAN:
10:30:22	15	Q Can you take us, Doctor, through the commentary reflected
10:30:26	16	on this slide beginning with the statement of Dr. Michel
10:30:27	17	Blaha.
10:30:30	18	A Yeah, Dr. Blaha notes,
10:30:32	19	"I'm very surprised by the magnitude of the
10:30:35	20	results which, quite frankly, are large. My
10:30:38	21	expectations were very low. A lot of people are
10:30:43	22	legitimately surprised by this."
10:30:46	23	Q And do you know Dr. Michael Blaha?
10:30:49	24	A Oh, yeah.
10:30:50	25	Q I see he's also at the Ciccarone Center; is that right?

- A Yeah, we published a lot of papers together.
- Q What did Dr. Deedwania have to say in the *Chest Physician* article?
- A Dr. Deedwania notes,

10:30:54

10:30:56

10:31:02

10:31:02

10:31:04

10:31:08

10:31:11

10:31:14

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"REDUCE-IT is a phenomenal trial and a game changer because it has shown for the first time that triglyceride reduction with an appropriate therapy, in this case icosapent ethyl, when used in an appropriate doses can make a significant difference."

- Q And Dr. Shapiro.
  - "So I think most people in this field would look at this as a homerun and really view this as being an inflection point in our ability to manage atherosclerotic cardiovascular disease risk. We have a new option that impacts cardiovascular outcomes to a greater extent than just throwing on more LDL cholesterol lowering drugs. So now we have a new option for patients in this category who also happen to have elevated triglycerides where you're going to get more bang for your buck by using kind of an orthogonal therapy."
- Q I asked you about Dr. Blaha, do you also know Dr. Deedwania and Shapiro.
- A Yes, they're good friends.
- Q Are they, each of these three individuals well-regarded

10:32:13	1	cardiologists or preventive cardiologists?
10:32:16	2	A Yes.
10:32:18	3	Q Is the commentary that we've been looking at the full
10:32:21	4	extent of praise for the REDUCE-IT results or just examples?
10:32:25	5	A These are examples.
10:32:31	6	Q Let's now turn to the patents and the asserted claims.
10:32:34	7	Have you prepared a slide identifying the claims Amarin is
10:32:38	8	asserting in this case?
10:32:39	9	A Yes, counsel.
10:32:39	10	THE COURT: And I think, counsel, this may be a
10:32:41	11	good time for us to take our morning recess since you are
10:32:44	12	moving to a different topic.
10:32:47	13	We'll take our recess at this time. I I
10:32:50	14	don't know if Ms. Vannozzi has advised you of a hearing I have
10:32:54	15	at 1:30 that I need to try to manage. I'll figure out if we
10:32:59	16	should do it in this courtroom or another courtroom, but that
10:33:03	17	hearing I expect will be about 30 minutes.
10:33:03	18	Thank you.
10:33:03	19	(A recess was taken.)
10:53:57	20	THE COURT: Please be seated.
11:21:36	21	Counsel, I apologize, I have to address an
11:21:39	22	emergency matter in our Las Vegas courthouse. It's emergency
11:21:45	23	because there's no power so I had to close the courthouse. I
11:21:48	24	may get interrupted again as we try to evacuate everybody from
11:21:53	25	the building.

11:21:54	1	So I apologize.
11:21:57	2	MR. ELIKAN: May I proceed, Your Honor?
11:21:58	3	THE COURT: Yes.
11:21:59	4	MR. ELIKAN: Can we have PDX 6-8, please.
11:22:06	5	Your Honor, I neglected
11:22:08	6	THE COURT: Is one that you wanted to move for
11:22:10	7	admission?
11:22:10	8	MR. ELIKAN: Yes, I moved in the other one and I
11:22:13	9	received a note saying I hadn't a moved in PDX 6-8 I will rule
11:22:18	10	it under rule
11:22:20	11	THE COURT: Any objection?
11:22:21	12	MR. KLEIN: No objection.
11:22:21	13	THE COURT: PDX 6-8 is admitted. I had a note
11:22:25	14	to remind you at the end as well, so I'm glad you remembered.
11:22:25 11:22:25	15	(Plaintiffs' Exhibit 6-8 received in evidence.)
11:22:25	16	BY MR. ELIKAN:
11:22:30	17	${\mathbb Q}$ When we were looking earlier, Doctor, at the Tricor and
11:22:33	18	Lovaza demonstratives, I asked you some questions about
11:22:37	19	predictability and I wanted to make sure we were on the same
11:22:40	20	page.
11:22:40	21	Would a person of ordinary skill in the art in 1998
11:22:43	22	have expected to see the same elevation of LDL-C when a
11:22:49	23	triglyceride-lowering agent is given to a very high
11:22:52	24	triglyceride population as is seen when a
11:22:57	25	triglyceride-lowering agent is given to a population with

11:23:00	1	lower triglyceride levels?
11:23:02	2	A No.
11:23:03	3	Q What, instead, would the person of ordinary skill in the
11:23:06	4	art expect?
11:23:07	5	A They would have expected that with baseline triglyceride
11:23:11	6	above 500, the elevation would have been much steeper, much
11:23:15	7	more substantial compared to less than 500.
11:23:18	8	And, in fact, if we look at patients with
11:23:25	9	triglycerides less than 500, as we saw with fenofibrate label,
11:23:32	10	if they were around 230, they might actually decrease.
11:23:36	11	Q I would like to turn now to the patents and the asserted
11:23:40	12	claims. Have you prepared a slide identifying the claims
11:23:45	13	Amarin is asserting?
11:23:46	14	A Yes.
11:23:47	15	MR. ELIKAN: Can we have PDX 6-11.
11:23:47	16	BY MR. ELIKAN:
11:23:54	17	Q Are these the same claims that Dr. Budoff identified in
11:23:57	18	his testimony?
11:23:58	19	A Yes, counsel.
11:23:58	20	Q And Dr. Budoff testified do you recall his testimony,
11:24:03	21	did you review it?
11:24:04	22	A Yes.
11:24:04	23	Q Do you recall that Dr. Budoff testified that use of
11:24:09	24	Vascepa, according to the product label, is covered by these
11:24:15	25	claims. Will you be relying on that testimony today?

Yes, I will be relying on that testimony. 11:24:17 Let's cover a few preliminary before we get into the 2 11:24:19 3 heart of your opinions? 11:24:23 Were you instructed about the standard to be used in 11:24:23 4 5 evaluating whether a patent claim would be obvious. 11:24:27 6 Α Yes. 11:24:29 7 MR. ELIKAN: Can we have PDX 6-12, please. 11:24:31 11:24:31 8 BY MR. ELIKAN: 9 What are the factors that you were informed must be 11:24:37 considered in an obviousness analysis? 10 11:24:39 11 There are four. Scope and content of the prior art, 11:24:42 Α 12 differences between the claimed invention and the prior art, 11:24:46 11:24:51 13 level of ordinary skill in the art, and objective evidence of 11:24:55 14 non-obviousness, including unexpected results, long felt need, 11:25:00 15 failure of others, skepticism and praise for or industry recognition of the invention. 16 11:25:05 11:25:09 17 And you just were telling us what's on the left side of 11:25:13 18 the legal standard slide. What do you have on the right 11:25:16 19 there? A claim may be obvious if a person of ordinary skill in 11:25:16 20 the art who have had, number one, been motivated to combine 21 11:25:21 11:25:24 22 prior art references to arrive at the claimed invention. 11:25:28 23 And number two, reasonably expected success in 11:25:31 24 making the claimed invention.

And did you apply the standards that you've just

11:25:32 25

Q

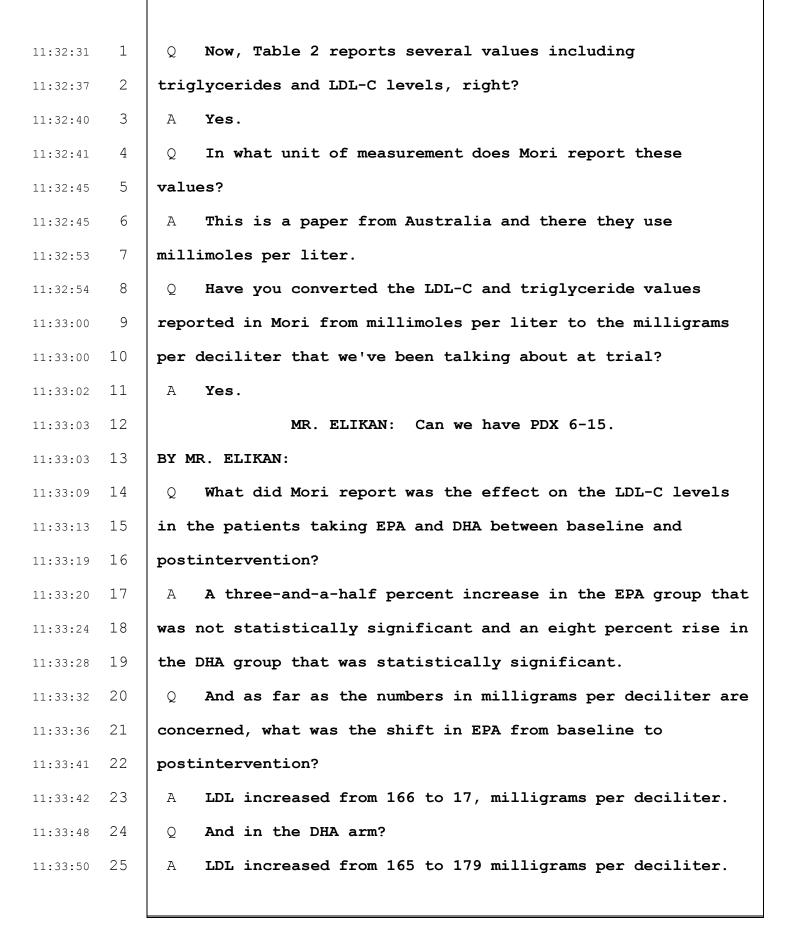
testified to and that are displayed on PDX 6-12? 1 11:25:35 2 Α Yes. 11:25:39 3 In evaluating whether the asserted claims would have been 11:25:40 obvious, did you consider the credentials of the person of 11:25:47 4 5 ordinary skill in the art? 11:25:50 6 Α Yes. 11:25:52 7 MR. ELIKAN: Can we have PDX 6-13. 11:25:53 11:25:53 8 BY MR. ELIKAN: 9 Can you identify the qualifications that you used for the 11:25:56 person of ordinary skill in the art? 10 11:26:03 11 A clinician with M.D. or DO and at least 2 to 3 years in 11:26:03 Α 12 the experience of diagnosis, evaluation, and treatment of 11:26:09 11:26:12 13 lipid blood disorders including severe hypertriglyceridemia 14 including triglyceride levels of at least 500, or, 11:26:15 15 alternatively, a clinician, such as a nurse practitioner or 11:26:19 physician's assistant with 3 to 5 years of experience in the 16 11:26:23 17 diagnosis, evaluation and treatment of lipid blood disorders 11:26:26 18 including severe hypertriglyceridemia. 11:26:30 Do you recall that Dr. Heinecke used a different set of 19 11:26:32 11:26:35 20 credentials for the person of ordinary skill in the art than 21 you did? 11:26:39 11:26:39 2.2 Α Yes. 11:26:40 23 Would your opinions that the asserted claims were not 11:26:42 24 obvious be any different if you used the set of credentials 25 that he used instead? 11:26:47

11:26:48	1	A No, counsel.
11:26:50	2	${\mathbb Q}$ And in evaluating whether the claims were obvious, are
11:26:55	3	you using the same March 2008 date that Dr. Heinecke did?
11:26:59	4	A Yes.
11:26:59	5	Q Do you recall that Dr. Heinecke testified that his
11:27:02	6	opinions would not be different if he used the date of
11:27:05	7	February 2009?
11:27:06	8	A Yes.
11:27:06	9	Q Would your opinions also remain the same?
11:27:09	10	A Yes.
11:27:10	11	Q Earlier in this case, the Court construed some of the
11:27:14	12	claim terms in the asserted patents, did you consider and
11:27:17	13	apply those constructions in your analysis?
11:27:20	14	A Yes.
11:27:20	15	Q Among the claim constructions it ruled upon, the Court
11:27:25	16	concluded that "substantially no DHA" means no more than four
11:27:30	17	percent DHA. Do you understand that?
11:27:32	18	A I do.
11:27:33	19	Q And if I use that phrase substantially no DHA, will you
11:27:38	20	understand that I mean no more than four percent?
11:27:40	21	A Yes, counsel.
11:27:41	22	Q I want to turn now to your opinions that the asserted
11:27:46	23	claim were not obvious.
11:27:49	24	Dr. Heinecke testified that the asserted claims
11:27:53	25	would have been obvious over a combination of what he called
		i

11.07.50	1	key prior art references and I want to show you his
11:27:58	Τ	key prior art references and I want to show you his
11:28:01	2	combination.
11:28:02	3	MR. ELIKAN: Can we have PDX 6-14.
11:28:02	4	BY MR. ELIKAN:
11:28:09	5	Q And do you agree with Dr. Heinecke's contentions that
11:28:13	6	contention that the asserted claims would have been obvious
11:28:16	7	over his proposed combination of what he calls the key prior
11:28:20	8	art Lovaza PDR, Mori 2000, Hayashi and Kurabayashi?
11:28:27	9	A No.
11:28:28	10	Q Let's start with the Lovaza PDR.
11:28:32	11	You previously testified the treatment with Lovaza
11:28:35	12	produces a large LDL-C increase in patients with very high
11:28:40	13	triglycerides.
11:28:40	14	MR. ELIKAN: I want to look at DX 1535, the PDR,
11:28:47	15	at page 3. And can we blow up Table 2 and can we highlight
11:28:57	16	the LDL-C line.
11:28:57	17	BY MR. ELIKAN:
11:29:01	18	Q Is that LDL-C increase reflected in the Lovaza PDR?
11:29:05	19	A Yes.
11:29:05	20	Q And what specifically is the difference between Lovaza
11:29:10	21	and placebo recorded?
11:29:11	22	A For LDL, it's a 44.5 percent increase compared to
11:29:21	23	baseline.
11:29:21	24	Q And adjusted for placebo?
11:29:23	25	A Yes.

No, no, I'm asking you and what is the number adjusted 11:29:24 2 for placebo? 11:29:28 3 Α 49.3. 11:29:29 Is there any statement anywhere in the Lovaza PDR that 11:29:31 4 attributes the rise in LDL-C in severely hypertriglyceridemic 5 11:29:38 patients to either the DHA component alone or the EPA 6 11:29:45 7 component alone as opposed to the combination of the two and 11:29:50 11:29:55 8 other omega-3 fatty acids in Lovaza? 9 No, counsel. 11:29:58 Let's turn now to Mori 2000, DX 1538. 10 11:29:59 11 And looking at page 1 in the abstract, in the 11:30:13 12 section called Objective, what did Mori report was the purpose 11:30:16 11:30:22 13 of the study that's discussed in the article? The study's aim was to determine whether EPA and DHA had 14 11:30:26 15 differential effects on serum lipids and lipoproteins, glucose 11:30:31 and insulin in humans. 16 11:30:31 11:30:40 17 I want to look right below that to the section entitled 18 Design. Can you briefly describe the design of the study in 11:30:43 11:30:48 19 Mori. 11:30:48 20 It's a double-blind, placebo-controlled trial of parallel design including 59 overweight nonsmoking mildly 21 11:30:53 11:30:58 22 hyperlipidemic men who were randomly assigned to receive four 23 grams of purified EPA, DHA, or olive oil, which served as the 11:31:04 11:31:09 24 placebo daily while continuing their usual diets for six 11:31:13 25 weeks.

11:31:13	1	Q Did you say mildly hyperlipidemic?
11:31:17	2	A Yes.
11:31:18	3	Q What does that description indicate about whether
11:31:21	4	Dr. Mori believed he was reporting results relating to
11:31:26	5	treatment of patients with severe hypertriglyceridemia?
11:31:26	6	A Well, he clearly was not treating patients with severe
11:31:30	7	hypertriglyceridemia.
11:31:31	8	Q And were the 59 subjects that you mentioned divided into
11:31:36	9	smaller groups or treated all together?
11:31:39	10	A They were divided into three separate groups.
11:31:43	11	MR. ELIKAN: Let's turn to Table 2 at page 4.
11:31:46	12	Can we highlight the title.
11:31:46	13	BY MR. ELIKAN:
11:31:51	14	Q What type of information is in this table?
11:31:53	15	A This is a summary of the fasting serum lipids, glucose
11:31:58	16	and insulin at baseline and postintervention in the three
11:32:02	17	groups.
11:32:03	18	Q And do you see at the top of the treatment columns in
11:32:07	19	Table 2, what's reported there about how many study subjects
11:32:13	20	were in the different treatment arms of the study?
11:32:15	21	A There were 20 in the olive oil control group, 19 in the
11:32:20	22	EPA group and 17 in the DHA group.
11:32:23	23	Q How would you characterize the size of a study arm with
11:32:27	24	19 subjects?
11:32:29	25	A It would be considered small.
		1



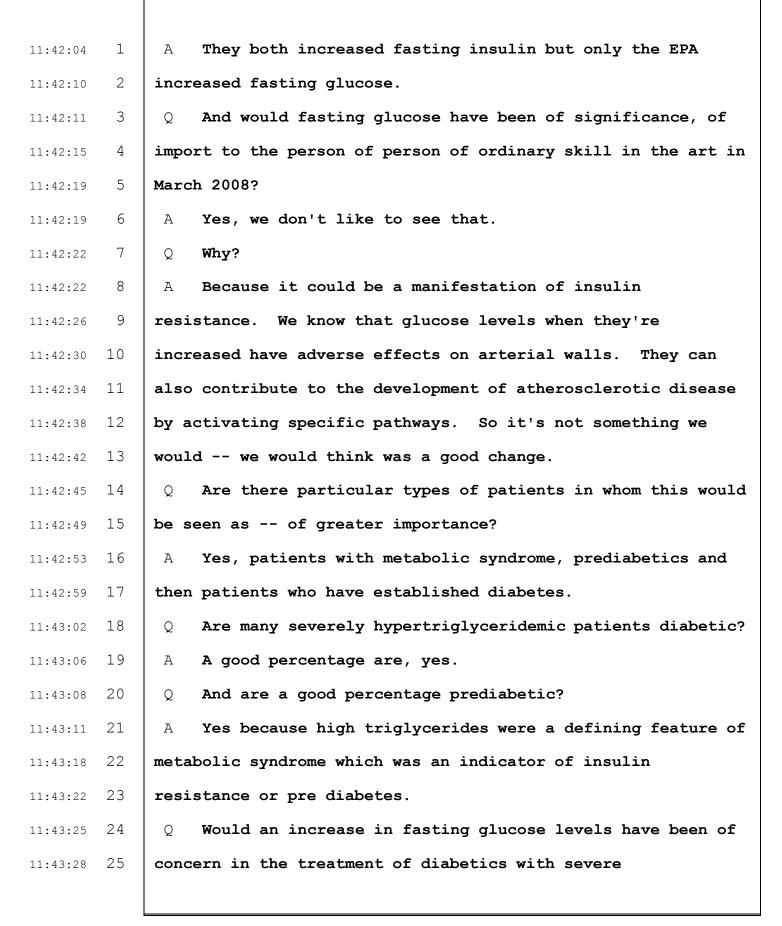
11:33:55	1	Q So did both raise LDL-C?
11:33:58	2	A Numerically they both increased.
11:34:01	3	Q And what were the baseline triglyceride levels of
11:34:04	4	patients who received EPA and DHA in Mori 2000 when expressed
11:34:10	5	in terms of milligrams per deciliter?
11:34:12	6	A 178 milligrams per deciliter. And the DHA group was
11:34:19	7	199 milligrams per deciliter.
11:34:20	8	Q And the 178 you mention is for the EPA group?
11:34:23	9	A Yes.
11:34:27	10	Q And were those patients I just want to make sure I'm
11:34:31	11	clear with severe hypertriglyceridemia?
11:34:33	12	A No, counsel.
11:34:34	13	Q Would a person of ordinary skill in the art in 2008
11:34:37	14	nevertheless have understood that the magnitude of LDL-C
11:34:42	15	increases reported in these patients would be applicable to
11:34:47	16	patients with very high triglycerides?
11:34:49	17	A No, counsel. These are borderline high triglyceride
11:34:53	18	patients, and we've already established that the patients with
11:34:56	19	very high triglycerides have a very different LDL response.
11:35:00	20	Q So I believe you characterize the sample size at least in
11:35:08	21	the EPA arm as small, right?
11:35:11	22	A Yes.
11:35:12	23	Q How do the baseline triglyceride levels of the group
11:35:14	24	taking EPA compare with the group taking DHA?
11:35:18	25	A It's lower. The baseline for EPA is 21 milligrams per

deciliter lower in the EPA group compared to the DHA group. 11:35:25 1 2 So the person of ordinary skill in the art I take it 11:35:29 3 would have seen that while there's numerical, I think that's 11:35:37 the word you used, increase in LDL-C in both arms only in the 11:35:41 4 DHA arm was the difference significantly significant? 11:35:46 5 6 Yes, sir. 11:35:52 Α 7 Would the person of ordinary skill in the art have 11:35:52 11:35:53 8 attributed this difference to the intrinsic properties of EPA 9 or instead to other issues like sample size or difference in 11:35:57 baseline triglyceride levels between the two groups? 10 11:36:00 11 It would have been the latter. 11:36:04 Α 12 MR. ELIKAN: I want to ask you about a few more 11:36:11 11:36:13 13 passages in Mori. Could we turn to page 3, in the section 11:36:17 14 about serum lipids in the right hand column. Can we highlight 11:36:23 15 the fifth sentence in that paragraph. BY MR. ELIKAN: 16 11:36:23 11:36:29 17 What triglyceride reductions did Mori report with EPA and 11:36:33 18 DHA? 11:36:34 19 The EPA group experienced an 18.4 percent reduction in 20 triglycerides and the DHA group experienced a 20 percent 11:36:38 21 reduction in triglycerides compared to placebo. 11:36:42 11:36:45 22 And looking at this sentence, would the person of 11:36:48 23 ordinary skill in the art in March 2008 have believed that EPA 11:36:53 24 offered an advantage over DHA in terms of triglyceride 11:36:57 25 lowering?

11:36:58	1	A No.
11:36:58	2	Q And more generally, looking at the article as a whole,
11:37:03	3	would a person of ordinary skill in the art viewed Mori as
11:37:07	4	teaching that EPA had advantages over DHA?
11:37:10	5	A No.
11:37:11	6	Q Let's look at some other passages in Mori. I want to go
11:37:15	7	to page 4, the right-hand column under Discussion.
11:37:20	8	In the first sentence, do you see that Dr. Mori
11:37:24	9	states that the study addressed whether purified EPA and DHA
11:37:30	10	have different effects on serum lipids and lipoproteins, LDL
11:37:37	11	particle size, glucose and insulin in mildly hyperlipidemic
11:37:43	12	men?
11:37:43	13	A Yes.
11:37:44	14	Q And is that, indeed, what the study addressed?
11:37:51	15	A Yes.
11:37:52	16	Q Okay. I want to highlight the second sentence.
11:37:55	17	Of the effects studied, what does Mori report about
11:37:59	18	the relative performance of EPA and DHA?
11:38:04	19	A We found that DHA, but not EPA improved serum lipid
11:38:10	20	status, in particular a small increase in HDL cholesterol and
11:38:13	21	a significant increase in the HDL2 cholesterol sub fraction
11:38:18	22	without adverse effects on fasting glucose concentrations.
11:38:23	23	${ t Q}$ In plain English what are they reporting there, the
11:38:25	24	authors of this paper?
11:38:26	25	A Well, at the priority date HDL cholesterol was believed
		1

11:38:30	1	to be the good cholesterol. The anti-atherogenic cholesterol
11:38:36	2	and it was believed that raising HDL cholesterol
11:38:39	3	Q More generally doctor, are the authors saying that EPA
11:38:45	4	has advantages over DHA or not?
11:38:47	5	A Yes.
11:38:49	6	Q I'm sorry I asked whether EPA is reported as showing
11:38:53	7	advantages over DHA.
11:38:55	8	A No. They specifically state that DHA but not EPA
11:39:04	9	improved serum lipid status.
11:39:06	10	Q And how did you understand the authors saying that
11:39:11	11	increases in these parameters with DHA improved serum lipid
11:39:18	12	status?
11:39:18	13	A In March of 2008, it would have been viewed as a
11:39:23	14	positive, if the HDL cholesterol level rose and specifically,
11:39:27	15	at the time, in general, the HDL-two cholesterol sub fraction
11:39:32	16	was viewed as the most beneficial sub fraction of HDL. So
11:39:36	17	this would have been viewed in a positive light.
11:39:40	18	Q Now, earlier we saw that LDL-C increased by 33.5 percent
11:39:45	19	I'm sorry, let me say that again. By 3.5 percent in the
11:39:50	20	EPA arm and by eight percent in the DHA arm. In view of that
11:39:55	21	difference, how do you make sense of Dr. Mori's conclusion
11:39:59	22	that DHA, but not EPA improved serum lipid status?
11:40:06	23	A Well, he, here, notes the changes in HDL cholesterol and
11:40:11	24	HDL-two cholesterol. They had an equal capacity to reduce
11:40:17	25	triglycerides. Then he goes on to talk about other

11:40:19	1	advantages.
11:40:20	2	Q Do you regard this sentence as treating the overall serum
11:40:28	3	lipid status?
11:40:28	4	A Yes.
11:40:29	5	${\mathbb Q}$ So given that, and given the difference between the LDL-C
11:40:41	6	performance in the two arms, how do you make sense of his
11:40:45	7	conclusion that DHA but not EPA improved serum lipid status?
11:40:50	8	A Well, there's also an imbalance in the baseline
11:40:54	9	triglyceride level of 21 milligrams per deciliter, and I think
11:41:01	10	a POSA would have viewed that as enough to perhaps induce a
11:41:07	11	favor to EPA in terms of overall magnitude of LDL elevation.
11:41:13	12	A 21-milligram per deciliter difference could possibly account
11:41:17	13	for whether or not there was a statistically significant
11:41:21	14	difference or not in the EPA group.
11:41:25	15	Q Would Dr. Mori's conclusion that DHA but not EPA improved
11:41:31	16	serum lipid status have led a person of ordinary skill in the
11:41:37	17	art in March 2008 to get rid of the DHA and use highly
11:41:41	18	purified EPA?
11:41:42	19	A No.
11:41:44	20	MR. ELIKAN: Let's turn to page 8. And I want
11:41:47	21	to look at the third full paragraph of the left-hand column.
11:41:51	22	Can we highlight the first sentence.
11:41:51	23	BY MR. ELIKAN:
11:41:57	24	Q What did Mori report here about the effects of DHA and
11:42:01	25	EPA on fasting glucose?



```
hypertriglyceridemia?
11:43:32
         2
                   Surely.
11:43:32
              Α
         3
                   And why would that be?
11:43:33
                   Because we don't want to do anything that's going to
11:43:36
         4
              Α
             antagonize glucose control. Controlling glucose within
         5
11:43:40
         6
             specific boundaries is a component of guidelines around the
11:43:45
         7
             world.
11:43:51
11:43:51
         8
                   Would Mori's conclusion that only EPA increased fasting
             glucose have somehow motivated the person of ordinary skill in
11:43:56
             the art in 2008 to get rid of the DHA and use highly purified
        10
11:44:04
        11
             EPA?
11:44:08
       12
              Α
11:44:09
                   No.
11:44:13 13
                            MR. ELIKAN: I want to turn to page 6, and the
             last paragraph and highlight the first sentence.
11:44:16 14
11:44:16 15
             BY MR. ELIKAN:
11:44:22 16
                   Do you see a reference to LDL particle size?
11:44:25 17
              Α
                  Yes.
11:44:25 18
                   What is that?
11:44:26 19
                   LDL particle size as this phrase denotes, defines
             numerically the size of LDL particles circulating in the
11:44:33 20
       21
             blood.
11:44:39
                   As of 2008, March 2008, would the person of ordinary
11:44:39 22
11:44:45 23
             skill in the art have believed that LDL particle size was of
11:44:50 24
             import to patient health?
11:44:52 25
                         The Quebec Cardiovascular Study showed that LDL
              Α
                   Yes.
```

particle size was a factor. Larger particles appeared so be 11:45:00 2 less atherogenic, smaller particles more atherogenic. 11:45:03 3 And there was also evidence that smaller particles 11:45:08 would go -- undergo changes such as oxidation that might make 11:45:11 4 11:45:15 5 them more atherogenic as well. Smaller particles also have 6 greater difficulty being cleared. 11:45:20 7 So in a nutshell would it be fair larger good, smaller 11:45:23 11:45:27 8 bad? 9 In, in general way, yes. 11:45:27 And in this paragraph, what do the authors report about 10 11:45:29 the effect of DHA on LDL particle size? 11:45:34 11 12 That DHA reduced LDL particle size after omega-3 fatty 11:45:38 11:45:43 13 acid supplementation. 14 Would this suggestion that DHA increased LDL particle 11:45:49 15 size have led the person of ordinary skill in the art in 11:45:54 March 2008 to say get rid of the DHA, use highly pure EPA? 16 11:45:57 11:46:03 17 Α No. No. At the time, it was important to try to get a 18 comprehensive inventory of risk factor burden and certainly 11:46:08 the changes wrought by DHA would not be ones that you wanted 19 11:46:12 to exclude from a therapy. 11:46:18 20 Viewing the article as a whole would the person of 21 11:46:24

ordinary skill in the art have believed it was desirable to

get rid of the DHA and use highly purified EPA in patients

No, and Mori certainly does not signal that conclusion.

with very high triglycerides?

11:46:28

11:46:30 23

11:46:36 24

11:46:38 25

22

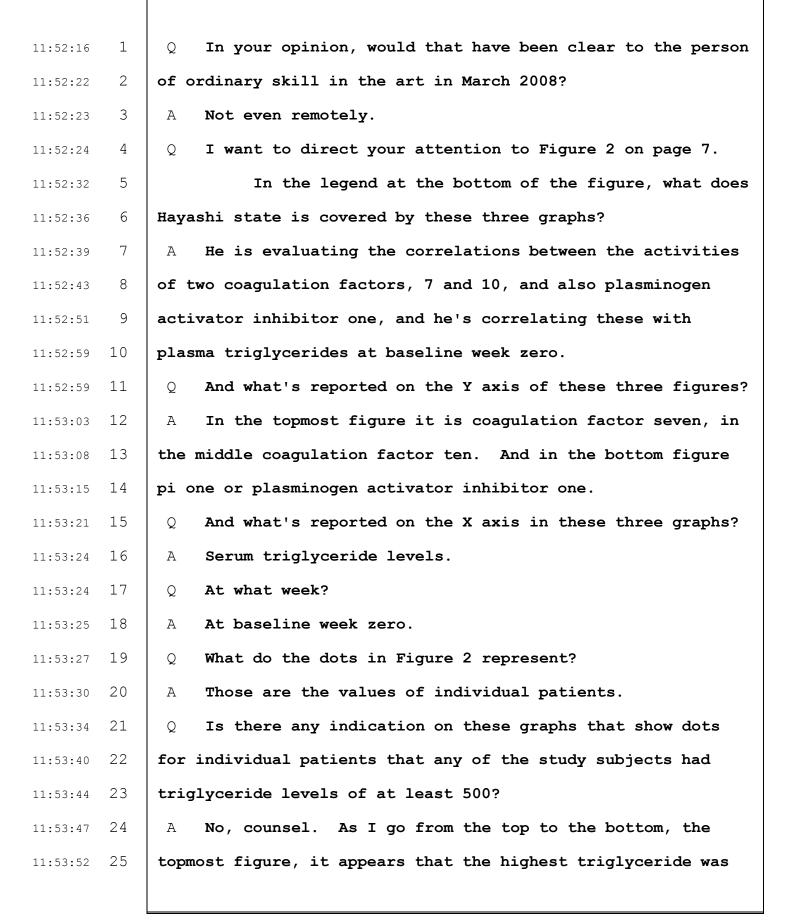
Α

11:46:43	1	Q And we've already addressed that Mori addressed mildly
11:46:50	2	hyperlipidemic patients, not the severely
11:46:55	3	hypertriglyceridemic. Does Mori teach that DHA has beneficial
11:47:00	4	properties over EPA or the other way around?
11:47:03	5	A Mori teaches that DHA as beneficial properties that
11:47:08	6	exceed those of EPA.
11:47:10	7	Q And in light of that would the person of ordinary skill
11:47:12	8	in the art want to get rid of the DHA?
11:47:14	9	A No.
11:47:15	10	Q Let's turn
11:47:15	11	A It would be not be a logical choice.
11:47:18	12	Q I'm sorry I missed that.
11:47:19	13	A It would not be a logical choice.
11:47:22	14	MR. ELIKAN: Let's turn now to Hayashi DX 1532.
11:47:26	15	This is one the other references relied on by Dr. Heinecke in
11:47:31	16	his key prior art combination. I want to go to page 4 and
11:47:36	17	highlight the first sentence of the section titled patients
11:47:40	18	and methods.
11:47:40	19	BY MR. ELIKAN:
11:47:47	20	Q In that sentence what do the authors report was the
11:47:50	21	subject of the study?
11:47:51	22	A The efficacy of ethyl icosapentate in the treatment of 28
11:47:55	23	patients with FCH, which is familial combined hyperlipidemia
11:48:03	24	and no other health problems or conditions was assessed.
11:48:06	25	Q And ethyl icosapentate is EPA?

11:48:10	1	A Yes.
11:48:10	2	Q And what is FCH?
11:48:12	3	A Familial combined hyperlipidemia is a state where both
11:48:18	4	LDL cholesterol and triglycerides are increased.
11:48:20	5	Q And I want to turn to the fourth sentence of the
11:48:25	6	paragraph, the one beginning with "in the six-week period."
11:48:31	7	A Yes.
11:48:32	8	Q What do the authors state here about the required
11:48:36	9	baseline levels for inclusion of patients in the study?
11:48:40	10	A They note in the six-week period before the start of the
11:48:43	11	study, a serum triglyceride concentration higher than
11:48:48	12	150 milligrams per deciliter or serum total cholesterol
11:48:53	13	concentration higher than 220 milligrams per deciliter had to
11:48:57	14	be maintained despite the dietary and lifestyle modifications
11:49:01	15	during that six-week period.
11:49:03	16	Q You said or. Is it sufficient to qualify and be included
11:49:07	17	in the study if you meet only one of those or do you have to
11:49:11	18	meet both of the lipid requirements?
11:49:14	19	A One or the other.
11:49:15	20	Q In this paragraph, is there any statement that any
11:49:23	21	subject in the study had triglycerides of at least 500?
11:49:28	22	A No.
11:49:28	23	${\mathbb Q}$ And still in the same paragraph, looking at the
11:49:32	24	penultimate sentence what does the paragraph state was the
11:49:37	25	daily does of EPA studied?

```
1800 milligrams -- excuse me, 1.8 grams daily.
11:49:39
         2
                  Does the patient and methods -- patients and methods
11:49:46
         3
             section that we're looking at indicate that the study was
11:49:49
             blinded?
11:49:52
         4
11:49:53
         5
              Α
                  No.
                  And based on your review, was it?
11:49:54
         6
        7
              Α
                  No.
11:49:57
11:49:57
        8
                  Was the study placebo-controlled?
       9
                  No.
11:50:00
              Α
                  How many arms were in the study?
11:50:00 10
              Q
       11
                  One.
11:50:03
              Α
11:50:05 12
                  So it wasn't blinded or placebo-controlled, right?
11:50:10 13
              Α
                  No.
                  Would the person of ordinary skill in the art have
11:50:11 14
11:50:13 15
             believed that these study design characteristics impact the
11:50:17 16
             reliability of the results reported?
11:50:19 17
              Α
                   The scientific method does require that there be a
11:50:23 18
                        And randomized studies are, of course, better.
             control.
11:50:31 19
                   I want to turn to the section on page 5 of Hayashi titled
11:50:37 20
             Results and highlight the first line.
       21
                        What was the duration of the study, how long?
11:50:40
11:50:43 22
              Α
                  Eight weeks.
                  Let's go to Table 1. What did this table report about
11:50:44 23
11:50:50 24
             the effects of EPA on triglycerides?
11:50:54 25
                   That they decreased by 41 percent in a statistically
              Α
```

11:50:59	1	significant way with a P value less than 0.05 compared to
11:51:04	2	baseline.
11:51:05	3	Q And you said statistically different. How do you know
11:51:08	4	that?
11:51:08	5	A Because there's a cross next to the 41 in the column
11:51:12	6	denoted mean change percent.
11:51:14	7	Q And turning to LDL-C, what did Table 1 report about the
11:51:22	8	effect of EPA on LDL-C after eight weeks?
11:51:25	9	A There was a nonstatistically significant 7 percent
11:51:29	10	reduction.
11:51:32	11	Q Does this table provide any breakdown of LDL-C effects by
11:51:38	12	baseline triglyceride level?
11:51:39	13	A No.
11:51:40	14	Q Does it report results for any subjects with very high
11:51:44	15	triglycerides, individual subjects?
11:51:46	16	A No. No.
11:51:47	17	Q Would a person of ordinary skill in the art in 2008 have
11:51:52	18	understood that the LDL-C results reported in this title would
11:51:57	19	be informative as to the LDL-C effects in patients with very
11:52:03	20	high triglycerides?
11:52:04	21	A No.
11:52:05	22	Q Do you recall that Dr. Heinecke testified that Hayashi
11:52:10	23	included at least one subject with triglyceride levels of at
11:52:14	24	least 500?
11:52:15	25	A Yes.



11:53:56	1	425. For the middle figure, it was approximately 375. For
11:54:02	2	the bottom figure it was once again approximately 375.
11:54:07	3	Q And what's the highest number of subjects reported in
11:54:10	4	these three graphs?
11:54:12	5	A In the uppermost graph 25. In the middle graph, 22. And
11:54:18	6	in the bottom-most graph 24.
11:54:20	7	Q So the highest number's in the top graph?
11:54:24	8	A Yes.
11:54:24	9	Q And of the 25 subjects whose triglyceride levels are
11:54:30	10	reported in the top graph, is it based on your review there
11:54:36	11	is none that exceed 500. How many exceed 400?
11:54:43	12	A In the topmost graph one exceeds 400. And no one exceeds
11:54:49	13	400 in the middle or the bottom graph.
11:54:51	14	Q And in terms of the plot points, the dots that are
11:54:55	15	listed, how many of the values in the top graph exceed 350?
11:55:01	16	A It appears to be two, in the middle graph, one, and in
11:55:07	17	the bottom graph one.
11:55:10	18	Q And where are most of the triglyceride values for the
11:55:16	19	subjects in these three graphs concentrated?
11:55:19	20	A It would be between 150 and 300 or so. Yeah. Some are
11:55:31	21	above. But in terms of were they concentrated, 150 to may be
11:55:38	22	350.
11:55:40	23	Q Now, earlier you said that Hayashi studied 28 subjects.
11:55:44	24	But in Figure 2 the largest number was 25.
11:55:47	25	A Yes.

11:55:48	1	Q Does Hayashi identify what the baseline triglyceride
11:55:53	2	levels were of the remaining three subjects?
11:55:55	3	A No, counsel.
11:55:57	4	Q Does Hayashi provide any discussion of why the three
11:56:03	5	triglyceride values aren't reported in this figure?
11:56:05	6	A No.
11:56:06	7	${\mathbb Q}$ Does Hayashi report that the three missing triglyceride
11:56:11	8	values exceeded 500?
11:56:14	9	A No.
11:56:14	10	Q Let's go back to Table 1 on page 5.
11:56:25	11	Do you recall that I think I already asked you
11:56:28	12	this but I'm going to ask you again.
11:56:31	13	Do you recall that Dr. Heinecke testified that at
11:56:33	14	least one subject would have had triglyceride levels over 500
11:56:38	15	given that the reported triglyceride mean in Hayashi was 300
11:56:44	16	plus or minus 233 milligrams per deciliter?
11:56:48	17	A Yes.
11:56:49	18	Q And do you agree with him?
11:56:52	19	A No.
11:56:54	20	Q Why not?
11:56:56	21	A Well, where are these patients over 500? A POSA is not
11:57:02	22	going to sit down and begin imputing where that patient is.
11:57:07	23	They're not shown in any of the figures, and, moreover,
11:57:13	24	Hayashi used the Friedewald equation
11:57:16	25	Q We'll get to the Friedewald equation in a minute, Doctor.
		1

11:57:20	1	Let me ask you this. Even if Hayashi enrolled a few
11:57:25	2	subjects with triglyceride levels of at least 500, would it
11:57:28	3	have provided the person of ordinary skill in the art in 2008
11:57:33	4	with meaningful information about the LDL-C effects of EPA in
11:57:38	5	a population with very high triglycerides?
11:57:41	6	A No.
11:57:41	7	Q I want to direct your attention and highlight the last
11:57:47	8	sentence of the first paragraph on page 5.
11:57:55	9	Does this sentence reference the Friedewald method
11:57:59	10	that you just testified about?
11:58:01	11	A It does, counsel.
11:58:02	12	Q And what does it say?
11:58:03	13	A It states LDL cholesterol concentration was calculated by
11:58:08	14	the Friedewald equation.
11:58:10	15	Q What's the Friedewald equation in general terms?
11:58:13	16	A Well, the Friedewald equation is used to estimate LDL
11:58:18	17	cholesterol levels because they're typically not measured in a
11:58:21	18	lot of these studies directly through an assay.
11:58:24	19	So you basically use the total cholesterol, the HDL
11:58:28	20	cholesterol and triglycerides divided by five to estimate the
11:58:31	21	LDL cholesterol.
11:58:33	22	But the Friedewald is invalid
11:58:35	23	Q Let me ask you this. Do you recall that Dr. Heinecke
11:58:39	24	testified that the Friedewald equation is not a useful tool
11:58:42	25	for measuring LDL-C in patients with triglyceride levels of

11:58:47	1	400 milligrams per deciliter or greater?
11:58:50	2	A Yes.
11:58:51	3	Q Do you agree with Dr. Heinecke?
11:58:54	4	A Yes, he's correct.
11:58:56	5	Q As of March 2008, was it widely recognized that this
11:59:00	6	Friedewald equation was not a reliable way to estimate LDL-C
11:59:05	7	in patients with very high triglycerides?
11:59:07	8	A Yes, Dr. Friedewald himself pointed it out in the mid
11:59:11	9	'70s.
11:59:12	10	MR. ELIKAN: I want to look at DX 1546, the 1998
11:59:18	11	Saito reference that Dr. Heinecke testified about. And I want
11:59:21	12	to go to page 7.
11:59:22	13	Can we zoom in on the title Serum Lipid
11:59:28	14	Examination, and bring up the second paragraph under that
11:59:32	15	heading, and can we highlight the third sentence.
11:59:35	16	Just the third sentence, Mr. Brooks.
11:59:35	17	BY MR. ELIKAN:
11:59:56	18	Q What does Saito in this 1998 article report about the use
12:00:00	19	of the Friedewald equation?
12:00:02	20	A Dr. Saito notes that serum LDL cholesterol was calculated
12:00:06	21	by the below listed formula of Friedewald, although this
12:00:11	22	formula can't be applied when the triglyceride value is
12:00:14	23	greater than or equal to 400 milligrams per deciliter, and
12:00:18	24	such instances were treated as missing data without performing
12:00:22	25	the calculation.

12:00:25	1	Q Returning to Hayashi, as of March 2008, would it have
12:00:30	2	provided a reasonable expectation that using highly purified
12:00:35	3	EPA with substantially no DHA would lower triglycerides
12:00:40	4	without a substantial increase in LDL-C in patients with very
12:00:45	5	high triglycerides?
12:00:46	6	A No.
12:00:47	7	Q And why?
12:00:53	8	A Because he has no demonstrable patients or participants
12:00:59	9	in the study who had triglycerides of 500 or more and
12:01:04	10	moreover, even if he did, the LDL that he would have estimated
12:01:09	11	with the lipid profile in such a patient would be invalid.
12:01:12	12	Q And stepping back did Hayashi study a population were
12:01:19	13	very high triglycerides?
12:01:21	14	A No.
12:01:22	15	Q And what bearing, if any, does that have on the answer to
12:01:25	16	my question about what one would reasonably expect?
12:01:29	17	A The bearing is very simple, it doesn't answer the
12:01:33	18	question. It has no means by which to answer the question.
12:01:38	19	Q And based on Hayashi, if EPA had been given to patients
12:01:47	20	with severe hypertriglyceridemia, a patient population based
12:01:51	21	on the other literature that you've reviewed, looking at it in
12:01:57	22	March 2008, what would they have expected to see in a patient
12:02:01	23	population with very high triglycerides?
12:02:03	24	A That the LDL would have shot up.
12:02:06	25	MR. ELIKAN: Let's go to Kurabayashi. That's

12:02:07	1	the final reference in Dr. Heinecke's key prior art
12:02:12	2	combination. And I want to go to page 1 and put on the screen
12:02:18	3	the first paragraph of the method section in the left-hand
12:02:21	4	column.
12:02:21	5	BY MR. ELIKAN:
12:02:25	6	${\mathbb Q}$ What does Kurabayashi have it say about the design of the
12:02:28	7	study?
12:02:29	8	A Dr. Kurabayashi notes that they performed a prospective
12:02:34	9	observational 48-week study in hyperlipidemic menopausal
12:02:40	10	women. They randomly assigned 141 women whose levels of serum
12:02:44	11	total cholesterol would 220 to 280 milligrams per deciliter or
12:02:48	12	whose serum triglycerides were 150 to 400 milligrams per
12:02:53	13	deciliter.
12:02:54	14	${\mathbb Q}$ Let me stop you right there. I've got a question.
12:02:57	15	So this is the way that hyperlipidemic is defined
12:03:04	16	here?
12:03:04	17	A Yes, in Japan.
12:03:05	18	Q And what were the study groups treated with?
12:03:10	19	A There were two arms. The patients could be treated with
12:03:15	20	either estriol which is an estrogen derivative at two
12:03:20	21	milligrams daily. 72 women were in that group. Or, they
12:03:25	22	could be treated with a combination of ethyl icosapentate
12:03:32	23	which is EPA, at 1.2 grams with two milligrams of estriol, and
12:03:37	24	that group had 69 women.
12:03:40	25	Q So do both of arms get the estriol?

12:03:43	1	A Yes.
12:03:43	2	Q Then turning to page 4, Table 2, what did Kurabayashi
12:03:47	3	report was the mean triglyceride level at baseline of the
12:03:53	4	group that received the EPA and estriol?
12:03:56	5	A 135.6, plus or minus 56.9 milligrams per deciliter.
12:04:04	6	Q Would a person of ordinary skill in the art in March 2008
12:04:07	7	have understood 135 to represent even an elevated triglyceride
12:04:13	8	level?
12:04:14	9	A No. That would have been considered a normal
12:04:17	10	triglyceride level.
12:04:18	11	Q Would a person of ordinary skill in the art in March 2008
12:04:22	12	have expected that LDL-C effects reported in patients with
12:04:27	13	mean triglycerides of 135 would apply, be translatable to
12:04:36	14	patients with at least 500?
12:04:38	15	A No.
12:04:38	16	Q Why not?
12:04:40	17	A Because they would have known that a group of patients
12:04:44	18	with normal triglycerides would not behave in the same way as
12:04:52	19	a group of patients with very high triglycerides. They would
12:04:55	20	have anticipated a very large rise in LDL but with normal
12:04:59	21	triglyceride as in this range perhaps they would have even
12:05:03	22	seen a drop in LDL.
12:05:04	23	Q Was there an arm in Kurabayashi that studied DHA?
12:05:09	24	A No.
12:05:10	25	Q Now, we've established that the arms in the study

12:05:17	1	received estriol. What is estriol?
12:05:20	2	A Estriol is a downstream metabolite of estrogen. And
12:05:26	3	estriol is bioactive and it has effects on lipids, all
12:05:32	4	estrogens do.
12:05:34	5	Q Would the person of ordinary skill in the art in
12:05:38	6	March 2008 have known that estriol would have an effect on
12:05:42	7	lipid levels?
12:05:42	8	A Yes.
12:05:43	9	Q Given that belief, would the person of ordinary skill in
12:05:53	10	the art, reading Kurabayashi in March 2008, have drawn any
12:05:59	11	conclusions about the lipid effects of EPA alone?
12:06:04	12	A No. Because there was no EPA mono therapy arm of the
12:06:08	13	study.
12:06:09	14	Q Do you recall that Dr. Heinecke testified that estriol
12:06:13	15	does not interact with EPA and that therefore the presence of
12:06:17	16	estriol in both arms of the study did not confound the effects
12:06:21	17	of EPA?
12:06:22	18	A You can't draw that conclusion
12:06:22	19	Q I know
12:06:24	20	A from these data.
12:06:25	21	Q Okay. So you disagree with his testimony?
12:06:29	22	A I do.
12:06:29	23	Q And why do you disagree with Dr. Heinecke?
12:06:37	24	A Because the cleanest way to determine that would be to
12:06:40	25	also have included an EPA monotherapy arm.

12:06:44	1	Q Is estrogen something that you've studied or had to deal
12:06:48	2	with during your ob-gyn training?
12:06:53	3	A Of course.
12:06:53	4	Q Is it a complex or a simple molecule?
12:06:56	5	A It's a complex molecule.
12:06:58	6	Q And how would that affect the analysis of how much this
12:07:04	7	Kurabayashi study tells us, if anything, about the effects of
12:07:08	8	EPA alone?
12:07:09	9	A Yeah, I don't think it tells you much of anything about
12:07:12	10	EPA alone.
12:07:13	11	Q Did Dr. Heinecke cite any prior art or any literature to
12:07:18	12	support his position?
12:07:19	13	A No.
12:07:19	14	Q So we've now addressed Dr. Heinecke's key prior art. I
12:07:24	15	want to turn to your opinion that the asserted claims were not
12:07:28	16	obvious, and I want to turn to claim 1 of the '728 patent.
12:07:33	17	Have you prepared a slide that summarizes the
12:07:35	18	general reasons for your opinion that claim 1 would not have
12:07:38	19	been obvious?
12:07:39	20	A Yes, counsel.
12:07:40	21	MR. ELIKAN: Can we have PDX 6-16.
12:07:40	22	BY MR. ELIKAN:
12:07:44	23	Q And can you identify the general bases for your opinion.
12:07:47	24	A There was no reasonable expectation that high purity EPA
12:07:53	25	would avoid substantial increases in LDL cholesterol in

patients with very high triglycerides.

DHA was thought to be better for lipid and cardiovascular effects than EPA, and a POSA therefore would not have been led to use high purity EPA and substantially no DHA.

There was not a finite number of predictable options to pursue if seeking to lower triglycerides without substantially increasing LDL cholesterol in patients with severe hypertriglyceridemia and no reasonable expectation of success, and then there were objective indicia of nonobviousness.

- Q When you said POSA is that an acronym for person of ordinary skill in the art?
- A Yes.

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12:09:06

Q I want to explore each of these points more fully. Let's start with the first.

Do you recall that Dr. Heinecke testified that a person of ordinary skill in the art would have reasonably expected that one could avoid the large LDL-C increases reported in the Lovaza PDR by replacing the EPA, DHA, omega-3 fatty oil mixture with a more highly purity EPA formulation?

- A Yes, I recall.
- Q I'm sorry?
- A I recall.
- 12:09:12 25 Q Do you agree with him?

12:09:16	1	A No.
12:09:16	2	Q Why not?
12:09:17	3	A Because we have seen no evidence that it's DHA as opposed
12:09:22	4	to EPA that is responsible for the elevation in LDL.
12:09:28	5	And moreover, in Lovaza, it's not just a simple
12:09:31	6	mixture of EPA and DHA, it's actually a much more complex
12:09:36	7	mixture which they call omega-3 acid ethyl esters. There's 80
12:09:44	8	milligrams worth of other omegas in that preparation.
12:09:45	9	So, no, it was not obvious.
12:09:47	10	Q And would the person of ordinary skill in the art looking
12:09:52	11	at Lovaza have blamed the LDL-C rise observed in treating
12:09:57	12	patients with very high triglycerides on the particular drug
12:10:00	13	or, instead, on what happens when you lower triglycerides in
12:10:04	14	that population?
12:10:06	15	A The mechanism for lowering triglycerides in that
12:10:11	16	population.
12:10:12	17	Q Explain.
12:10:13	18	A Well, all of the drugs that had been approved for the
12:10:17	19	management of severe hypertriglyceridemia had a common theme
12:10:21	20	for patients in that boat. All of the drugs reduced the LDL
12:10:30	21	triglycerides and induced a triglyceride elevation that was
12:10:34	22	proportional to the baseline triglyceride.
12:10:36	23	I believe did I say LDL elevation?
12:10:36	24	THE COURT: Yes.
12:10:38	25	THE WITNESS: LDL excuse me, court reporter.

That would induce an LDL-C elevation that was proportional to 1 12:10:43 2 the magnitude of the baseline triglyceride. So they would 12:10:48 12:10:51 3 have believed it was actually a physiologic mechanism by which VLDL is converted to LDL. 12:10:56 4 BY MR. ELIKAN: 12:10:56 5 6 Was there suggestion in the prior art that one could 12:11:00 7 avoid large LDL increases in patients with very high 12:11:03 12:11:07 8 triglycerides by changing the composition of Lovaza to include 9 substantially all the omega-3 fatty acids except EPA? 12:11:11 10 Α No. 12:11:16 Do you recall that Dr. Heinecke testified that he doesn't 12:11:17 11 Q 12 think there's any evidence in the prior literature about what 12:11:21 12:11:24 13 the impact of EPA would be on LDL cholesterol in patients with triglycerides above 500 milligrams per deciliter? 14 12:11:29 15 Α Yes. 12:11:32 16 Without such evidence, was there any basis for a person 12:11:33 Q 17 of ordinary skill in the art to expect to see no LDL-C effect 12:11:39 18 when EPA is given to patients with very high triglycerides? 12:11:45 19 Of course not. 12:11:49 MR. ELIKAN: I want to look again at PDX 6-7 and 12:11:52 20 Can we put those side by side on the screen, Mr. Brooks? 21 12:11:55 BY MR. ELIKAN: 12:11:55 2.2 23 So you testified earlier about these -- the experience 12:12:05 24 with Lovaza and Tricor, triglyceride lowering agents when 12:12:09 12:12:15 25 given to patients with severe hypertriglyceridemia, right?

12:12:18	1	A Yes.
12:12:18	2	${\mathbb Q}$ Based on that information, would the person of ordinary
12:12:23	3	skill in the art have reasonably expected that you would see
12:12:26	4	the same effects with patients having triglyceride levels
12:12:30	5	above 500 as you would with patients with triglyceride levels
12:12:35	6	below 500?
12:12:36	7	A No.
12:12:37	8	Q Now, you testified earlier that the mean triglycerides in
12:12:41	9	the mildly hyperlipidemic men studied by Mori was 178 in the
12:12:49	10	EPA arm.
12:12:50	11	A Yes.
12:12:51	12	${\mathbb Q}$ Looking at these slides, with which group would the
12:12:55	13	population of mildly hyperlipidemic men studied in Mori best
12:13:02	14	fit?
12:13:02	15	A That would be the one to the far left.
12:13:04	16	Q Of which of the
12:13:06	17	A Of the left plot. So that would be the Tricor group with
12:13:11	18	mixed dyslipidemia with triglycerides over 150 but mean of
12:13:18	19	231.9.
12:13:18	20	Q Are you aware of any prior art that taught EPA would
12:13:22	21	perform differently from DHA in terms of LDL-C effects in
12:13:27	22	patients with triglyceride levels of at least 500?
12:13:33	23	A Counsel, please repeat that.
12:13:34	24	Q Are you aware of any prior art so before March 2008
12:13:40	25	that taught EPA would perform differently from DHA in terms of

12:13:45	1	LDL-C effects in patients with triglyceride levels of at least
12:13:50	2	500?
12:13:51	3	A No.
12:13:51	4	Q As of March 2008, was there any prior art demonstrating
12:14:00	5	that EPA had a different mechanism of action than DHA for
12:14:05	6	lowering triglycerides?
12:14:06	7	A No.
12:14:07	8	Q You've testified that the fatty acid mixture in Lovaza
12:14:15	9	substantially raised LDL-C in patients with very high
12:14:19	10	triglycerides, right?
12:14:19	11	A Yes.
12:14:21	12	Q As of March 2008 would the person of ordinary skill in
12:14:24	13	the art have had any reason related to mechanism of action to
12:14:29	14	expect that administering EPA by itself to such a population
12:14:35	15	would avoid substantially raising LDL-C?
12:14:38	16	A No.
12:14:39	17	MR. ELIKAN: I want to pull up DDX 6.70 from the
12:14:43	18	slide deck of Dr. Heinecke.
12:14:43	19	BY MR. ELIKAN:
12:14:48	20	Q Now, in his testimony Dr. Heinecke cited add discussed
12:14:53	21	some other references, Saito, 1998, Takaku 1991, Matsuzawa
12:15:05	22	1991 and Nakamura 1999, in which a single subject or a few
12:15:10	23	subjects receiving high purity EPA had triglyceride levels of
12:15:15	24	at least 500. Do you recall that testimony?
12:15:17	25	A Yes.

12:15:17	1	Q Did those references report the LDL-C effects of high
12:15:22	2	purity EPA in such subjects?
12:15:25	3	A No.
12:15:25	4	${\mathbb Q}$ Did any of these references study the effect of a 4-gram
12:15:30	5	dose of EPA?
12:15:31	6	A No.
12:15:31	7	Q I'm sorry?
12:15:32	8	A No.
12:15:33	9	Q Would any of these references have provided the person of
12:15:41	10	ordinary skill in the art in March 2008 with a reasonable
12:15:43	11	expectation of avoiding substantial increases in LDL-C in
12:15:47	12	patients with very high triglycerides?
12:15:49	13	A No, counsel.
12:15:50	14	MR. ELIKAN: Let's look at the Takaku reference
12:15:54	15	that Dr. Heinecke relied upon. That's DX 1550, Mr. Brooks.
12:15:59	16	And can we turn to page 12, Figure 3.
12:16:03	17	In the lower right-hand corner of the chart, if
12:16:06	18	we could highlight that, Mr. Brooks.
12:16:08	19	BY MR. ELIKAN:
12:16:08	20	Q That addresses preadministration serum triglycerides.
12:16:14	21	How many patients were studied when you add up the numbers?
12:16:18	22	A Thirty-three.
12:16:20	23	Q That's the 13 plus six plus four plus two?
12:16:23	24	A Yes, I think my math is correct there, it's 33.
12:16:28	25	${\mathbb Q}$ And looking at the bottom line, what was the mean

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triglyceride levels studied?
         1
12:16:31
         2
                   245 plus or minus 41.
12:16:33
         3
                  Do you recall that Dr. Heinecke testified that three of
12:16:36
             these subjects had triglyceride levels that exceeded 500?
12:16:39
         4
12:16:42
         5
              Α
                  Yes.
                  Does the Takaku paper anywhere provide information about
         6
12:16:43
         7
             the effect of the medication that was administered on LDL-C
12:16:47
12:16:53
        8
             for those particular subjects?
         9
                  No.
12:16:54
              Α
                   I want going to go to page 21 and the paragraph with the
        10
12:16:55
        11
             heading shift in serum LDL cholesterol.
12:16:59
        12
                        Highlighting the parenthetical in the first
12:17:05
12:17:10 13
             sentence, do you see that it indicates that LDL-C results were
12:17:13 14
             not obtained -- I'm sorry, that it says -- I'm paraphrasing,
12:17:20 15
             but that LDL-C results were not obtained for six subjects.
              Α
                  I see that.
       16
12:17:25
12:17:26 17
                  Did Takaku provide any information about the triglyceride
12:17:33 18
             levels of the subjects that were excluded?
12:17:36 19
              Α
                  No.
                   Could they have included the subjects reported to have
12:17:38 20
             triglycerides over 500?
        21
12:17:41
12:17:43 22
              Α
                   I think it would have been scientifically responsible,
12:17:46 23
             yes.
12:17:47 24
                  I'm not sure I followed your answer. Let me --
              Q
12:17:53 25
                   It's very -- I believe it would have been scientifically
              Α
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12:17:57	1	responsible to provide that information so that you can read
12:18:00	2	the paper and understand which patients were included, which
12:18:04	3	ones weren't.
12:18:05	4	$\mathbb Q$ Okay. So I'm asking about the six excluded subjects.
12:18:08	5	A Yes.
12:18:08	6	Q Could they have included the subjects reported to have
12:18:11	7	triglycerides over 500?
12:18:13	8	A Absolutely.
12:18:14	9	Q Does Takaku anywhere disclose clearly what method was
12:18:19	10	used to measure LDL-C in any of the patients studied?
12:18:23	11	A No.
12:18:24	12	Q We talked about Takaku. Did you prepare a slide based on
12:18:29	13	Dr. Heinecke's slide, 6.70, but that gives the rest of the
12:18:34	14	story for Takaku and the other references?
12:18:37	15	A Yes.
12:18:38	16	MR. ELIKAN: Can we have PDX 6-18.
12:18:38	17	BY MR. ELIKAN:
12:18:43	18	Q Can you tell us what you believed were the was the
12:18:46	19	takeaway message from Takaku 1991 that tells the rest of the
12:18:51	20	story.
12:18:53	21	A Three of 33 subjects had triglycerides that exceeded 500.
12:18:57	22	Mean triglyceride for the study was 245.
12:19:01	23	No LDL cholesterol results provided for patients
12:19:05	24	with triglycerides over 500, and no method for measuring LDL-C
12:19:10	25	was clearly disclosed.

12:19:12	1	Q Let's turn to Nakamura, on 1439. Can you walk us through
12:19:18	2	what the rest of the story is.
12:19:20	3	A One of 14 subjects had triglycerides that exceeded 500.
12:19:23	4	The mean triglyceride in the study was 183. No
12:19:26	5	LDL-C measurements provided.
12:19:30	6	Q Matsuzawa 1991, the rest of the story.
12:19:33	7	A One of 26 subjects had a triglyceride that exceeded 500.
12:19:37	8	The mean triglyceride for participants was 308. No LDL
12:19:44	9	cholesterol results provided for patients with triglycerides
12:19:46	10	over 500. And fine there were, they used the Friedewald
12:19:51	11	equation to calculate or estimate LDL, which is invalid over
12:19:55	12	400.
12:19:57	13	Q Saito, what's the rest of the story?
12:19:59	14	A One of 12 subjects had a triglyceride that exceeded 500.
12:20:04	15	Mean triglyceride was 295.
12:20:06	16	No LDL cholesterol results for patients with
12:20:10	17	triglycerides over 500, and even they again used the
12:20:12	18	Friedewald equation to estimate LDL-C.
12:20:15	19	Q Taken together, do you any of these studies are any of
12:20:23	20	these studies directed to a patient population with very high
12:20:28	21	triglycerides?
12:20:28	22	A No.
12:20:29	23	Q Do you recall that Dr. Heinecke also discussed the Epadel
12:20:37	24	prescribing information from 2007?
12:20:40	25	A Yes.

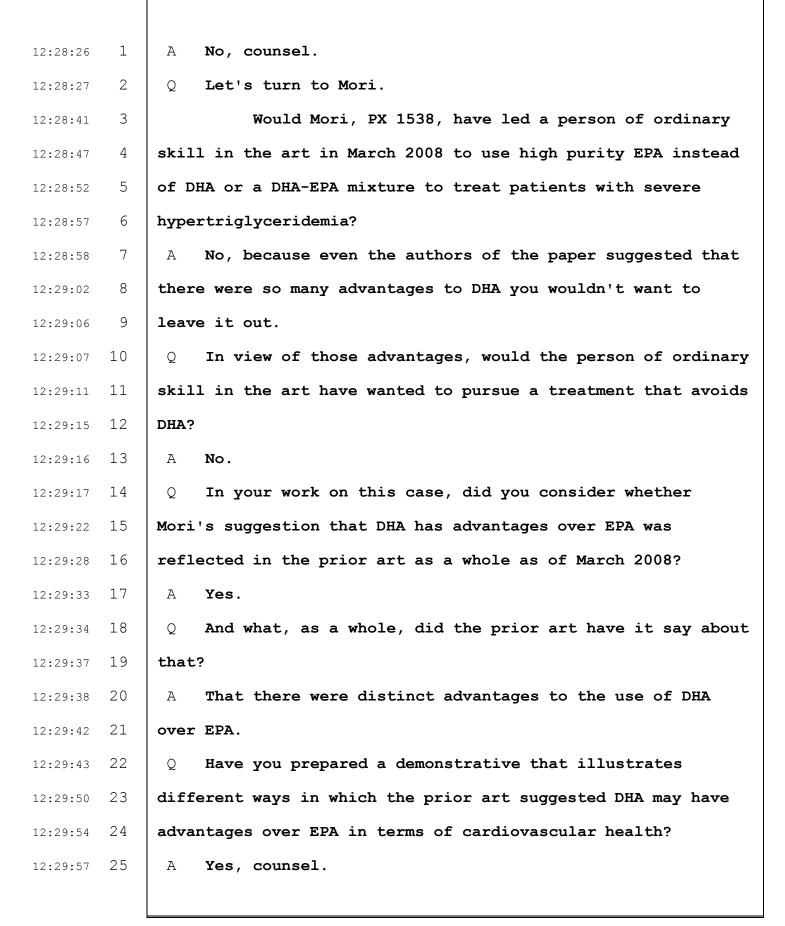
12:20:41	1	MR. ELIKAN: Can we have DX 1528. And I want to
12:20:45	2	go to page 1.
12:20:45	3	BY MR. ELIKAN:
12:20:48	4	Q Looking in the upper left-hand corner, what version of
12:20:51	5	the Epadel prescribing information was the 2007?
12:20:55	6	A Version 5 released in January of 2007.
12:20:58	7	${\mathbb Q}$ And turning to the second page, I want to turn to the
12:21:02	8	section indications efficacy?
12:21:05	9	A Yes.
12:21:06	10	Q What's the first indication listed here?
12:21:10	11	A Arteriosclerotic ulceration, alleviation of pain, and
12:21:16	12	feeling of cold.
12:21:18	13	Q Does that have anything to do with elevated
12:21:21	14	triglycerides, that indication?
12:21:22	15	A The feeling of cold or all three?
12:21:25	16	${\mathbb Q}$ Okay. Put together, it's one indication, is that
12:21:30	17	indication about hypertriglyceridemia or severe
12:21:35	18	hypertriglyceridemia or anything of the sort?
12:21:37	19	A Arteriosclerotic ulceration could be, but that's not easy
12:21:45	20	to establish or diagnose. So I would have to say on balance,
12:21:49	21	no.
12:21:50	22	Q And what's the second indication listed there?
12:21:54	23	A Well, it's this nebulous hyperlipidemia.
12:22:03	24	Q Any definition provided in the Epadel document that we're
12:22:06	25	looking at about what precisely hyperlipidemia means?

No, it's a little bit of a garbage basket term here, and 12:22:12 2 I'm puzzled by that because by now it would have been routine 12:22:15 12:22:19 3 to provide very specific classifications and definitions of what type of hyperlipidemia you're talking about because there 12:22:22 4 was no single drug available anywhere on earth that would 12:22:27 5 treat all forms of hyperlipidemia. 6 12:22:31 7 Looking to the right of hyperlipidemia, do you see the 12:22:33 12:22:37 8 second paragraph states that when an excess of triglycerides 9 are presented, depend on the extent of it, the dosage may be 12:22:42 increased to 900 milligrams per time and three times daily. 10 12:22:47 12:22:52 11 Α Yes. 12 Does this provide any information about the level of 12:22:52 12:22:56 13 triglycerides that were constitute an excess of triglycerides? 14 It provides no quidance, and, by this time, ATP III was 12:22:59 15 available, and certainly if you are marketing a drug like 12:23:04 this, you would want people to understand what it is you're 16 12:23:07 12:23:11 17 treating and what the clinical trial data are to support the 18 use of this in that setting. 12:23:15 Is there anything in this passage that clearly indicates 19 12:23:18 that in obtaining this indication, EPA was administered to 12:23:22 20 patients with triglyceride levels of at least 500? 21 12:23:26 12:23:29 22 Α No. 23 Have you seen anything in this document, as a whole, that 12:23:30 24 shows that in obtaining this indication, EPA was administered 12:23:36 25 to patients with triglyceride levels of at least 500? 12:23:42

12:23:45	1	A There's nothing here to indicate that.
12:23:47	2	Q Does the label report any LDL-C effects resulting from
12:24:09	3	the administration of EPA?
12:24:12	4	A No, counsel, there is no reference to LDL-C change.
12:24:16	5	Q Does it even mention LDL-C?
12:24:19	6	A No.
12:24:20	7	Q Does the Epadel prescribing information from 2007
12:24:25	8	describe the effects of EPA on apo B?
12:24:30	9	A No, sir.
12:24:31	10	Q In any population.
12:24:32	11	A No.
12:24:33	12	Q Does it even mention apo B?
12:24:36	13	A No.
12:24:38	14	MR. ELIKAN: Let's go back to the indication
12:24:39	15	section on the second page, we're already there.
12:24:39	16	BY MR. ELIKAN:
12:24:43	17	${\mathbb Q}$ What did the Epadel prescribing information describe as
12:24:46	18	the dosing for hyperlipidemia? We walked through this a
12:24:51	19	moment ago but I'm going ask you again and I've got a question
12:24:54	20	about this.
12:24:55	21	A There are two recommendations here, 600 milligrams, 3
12:25:04	22	times daily, which would be 1.8 grams total daily. Dosage can
12:25:09	23	be increased depending upon age and condition. Which, again,
12:25:14	24	what is someone supposed to make of that?
12:25:17	25	And then another dose would be the 2.7 grams dose

12:25:23	1	900 milligrams 3 times daily for an excess of triglycerides
12:25:28	2	which of course is not defined.
12:25:30	3	Q Do you read this as pointing to a 4-gram dose of EPA?
12:25:35	4	A No.
12:25:35	5	Q Let's turn back to PDX 6-19, your summary slide. I'm
12:25:43	6	going to go to the second reason now that claim 1 in your
12:25:46	7	opinion was not obvious.
12:25:51	8	I would like to begin with the references that we
12:25:53	9	looked at before, starting with the Lovaza PDR. So did the
12:25:58	10	Lovaza PDR, DX 1535, suggest there were advantages to using
12:26:05	11	high purity EPA over using DHA?
12:26:09	12	A No.
12:26:09	13	Q Did it suggest there were advantages in using high purity
12:26:14	14	EPA over an EPA-DHA mixture?
12:26:18	15	A No.
12:26:19	16	Q Did the Lovaza PDR draw any comparisons whatsoever
12:26:24	17	between the individual effects of EPA and of DHA?
12:26:29	18	A No.
12:26:32	19	Q Would it have motivated the person of ordinary skill in
12:26:36	20	the art in March 2008, to eliminate substantially all the DHA
12:26:42	21	and instead use only high purity EPA to treat severe
12:26:48	22	hypertriglyceridemia?
12:26:50	23	A Of course not.
12:26:52	24	Q Let's turn to Hayashi.
12:26:56	25	Would Hayashi have led a person of ordinary skill in
		1

12:27:01	1	the art in March 2008 to use high purity EPA instead of DHA or
12:27:06	2	a DHA-EPA mixture in patients with very high triglycerides?
12:27:10	3	A It offered no basis for such an approach.
12:27:14	4	Q Did it state that high purity EPA had any advantages over
12:27:19	5	DHA?
12:27:19	6	A No.
12:27:20	7	Q Did it compare the effects of high purity EPA to high
12:27:23	8	DHA?
12:27:24	9	A No.
12:27:24	10	Q Let's turn to Kurabayashi.
12:27:26	11	Would Kurabayashi have led the person of ordinary
12:27:29	12	skill in the art in March 2008, to use high purity EPA instead
12:27:35	13	of DHA to treat severe hypertriglyceridemia?
12:27:39	14	A No. There was no one enrolled in the study with a
12:27:43	15	triglyceride over 400.
12:27:45	16	Q Would it have led the person of ordinary skill in the art
12:27:52	17	in March 2008, to use high purity EPA instead of a DHA-EPA
12:27:59	18	mixture to treat severe hypertriglyceridemia?
12:28:01	19	A No, there was no EPA monotherapy arm and there was also
12:28:05	20	no comparison between EPA and DHA within the study.
12:28:10	21	Q Is there somewhere in Kurabayashi that Kurabayashi states
12:28:13	22	that high purity EPA has advantages over DHA?
12:28:17	23	A No.
12:28:17	24	Q I think we've already been through this. There's no
12:28:22	25	comparison of high purity EPA to DHA in Kurabayashi, right?



12:29:58	1	MR. ELIKAN: Can we have PDX 6-20.
12:29:58	2	BY MR. ELIKAN:
12:30:02	3	Q And what does this slide illustrate?
12:30:04	4	A This is just a summary schematic showing HDL in the left
12:30:11	5	sphere, and HDL cholesterol at the time was believed to be
12:30:15	6	beneficial if you raised it.
12:30:16	7	In the middle sphere you see LDL particle size which
12:30:21	8	we've discussed, and in the right, most sphere blood pressure.
12:30:26	9	Q And what is the title above?
12:30:28	10	A "Prior Art Suggested DHA Had Advantages Over
12:30:30	11	EPA With Respect to These Factors."
12:30:33	12	Q Okay. I want to discuss these considerations one at a
12:30:36	13	time starting with HDL-C. What is that again?
12:30:41	14	A High density lipoprotein cholesterol, believed to be the
12:30:45	15	good cholesterol.
12:30:46	16	Okay. Pickup truck, so the LDL would be viewed as
12:30:49	17	the dump truck leaving cholesterol and other lipids proximate
12:30:53	18	the blood vessel wall. The HDL particle would be seen as the
12:30:57	19	pickup truck because it could pick up the excess lipid and
12:30:57	20	take it back to the liver for disposal, which would be seen as
12:30:57	21	beneficial.
12:31:04	22	Q You previously testified that Mori reported that DHA but
12:31:09	23	not EPA increased HDL-C. Was there other prior art as of
12:31:15	24	March 2008 saying that DHA raised HDL-C?
12:31:20	25	A Yes.

```
I want to turn to --
12:31:20
         1
         2
                            THE COURT: Before you turn to the prior art.
12:31:22
         3
                            MR. ELIKAN: Yes.
12:31:25
                            THE COURT: Counsel, could I have the doctor
12:31:26
         4
             explain again about this idea of the dump truck and the pickup
         5
12:31:28
             truck in explaining this diagram. I'm trying to understand.
         6
12:31:32
         7
             I don't quite understand.
12:31:35
12:31:38
         8
                            MR. ELIKAN: Okay. Would it help, Your Honor,
       9
             if we went back to the demonstrative that we were looking at
12:31:39
        10
             earlier about the metabolism of VLDL to LDL?
12:31:42
        11
                            THE COURT: I doubt -- I remember that --
12:31:47
       12
                            THE WITNESS: I can --
12:31:50
12:31:52 13
                            THE COURT: -- demonstrative. I think I
12:31:53 14
             understand that.
                                I just want to understand this one.
12:31:55 15
                            THE WITNESS: Okay. Your Honor, the HDL
             lipoprotein is seen as the good cholesterol-bearing
       16
12:31:58
12:32:04 17
             lipoprotein because --
12:32:05 18
                            THE COURT:
                                        That's all -- that's usually how I
12:32:08 19
             try to remember. H is good, you want high. L is bad, you
12:32:14 20
             want low.
       21
                            THE WITNESS: Yeah, yeah.
12:32:15
12:32:15 22
                            And what the HDL particle can do is it can
12:32:19 23
             interact with cell components in the blood vessel wall that
12:32:24 24
             are taking up excess cholesterol leading to the formation of
12:32:28 25
             an atherosclerotic plaque.
```

12:32:29	1	Well, this is the one lipoprotein that can
12:32:31	2	actually interact with that, draw cholesterol out, get back
12:32:37	3	into the bloodstream, and take it back to the liver for
12:32:40	4	elimination.
12:32:40	5	THE COURT: Oh, that's what you analogized HDL
12:32:43	6	as a dump truck taking that back
12:32:44	7	THE WITNESS: The pickup truck.
12:32:46	8	THE COURT: Thank you.
12:32:46	9	THE WITNESS: And it was shown in studies that
12:32:51	10	people with higher HDL had lower risk for the development of
12:32:55	11	heart disease.
12:32:57	12	So at the time, in March 2008, if you increased
12:33:01	13	HDL, it would have been seen as a good thing.
12:33:05	14	THE COURT: Got it. Thank you.
12:33:06	15	Is it still seen as a good thing now?
12:33:09	16	THE WITNESS: It is, but some studies have been
12:33:12	17	negative, but effort is still being made to investigate it
12:33:15	18	further because it's very complicated.
12:33:18	19	THE COURT: Thank you.
12:33:19	20	MR. ELIKAN: I want to turn to DX 1933. This is
12:33:25	21	a pre-admitted article, Your Honor, by Dr. Agren, titled "Fish
12:33:31	22	Diet, Fish Oil, and Docosahexanoic Acid Rich Oil Lower Fasting
12:33:39	23	and Postprandial Plasma Lipid Levels" from 1996, and the
12:33:46	24	parties have stipulated that it's prior art, and that's in
12:33:51	25	paragraph 65.

12:33:51	1	THE COURT: Thank you.
12:33:51	2	BY MR. ELIKAN:
12:33:57	3	Q I want to look at the objective. What did this
12:34:01	4	publication concern?
12:34:03	5	A The present study was carried out to clarify the effects
12:34:07	6	of fish diet, fish oil, and DHA-rich oil on fasting and
12:34:14	7	postprandial lipid levels in healthy male students.
12:34:18	8	Q What's postprandial?
12:34:20	9	A That's after a meal.
12:34:23	10	MR. ELIKAN: Let's turn to page 6 in the second
12:34:24	11	paragraph under discussion. I want to highlight the two
12:34:32	12	sentences starting Sanders and Hinds.
12:34:32	13	BY MR. ELIKAN:
12:34:37	14	Q What did the authors have to say about DHA here in the
12:34:43	15	Agren article?
12:34:43	16	A Sanders and Hinds found increased HDL and HDL-2
12:34:49	17	cholesterol concentrations after DHA-rich fish oil intake and
12:34:54	18	proposed that DHA is responsible for these changes.
12:34:57	19	The greatest increase of total HDL and HDL-2
12:35:02	20	cholesterol in the DHA oil group in the present study supports
12:35:06	21	this idea.
12:35:09	22	Q So are those results and the observation made here about
12:35:14	23	Sanders and Hinds, is that consistent with what we saw in
12:35:19	24	Mori?
12:35:20	25	A Yes.

12:35:22	1	MR. ELIKAN: Let's go back to PDX 620, and I
12:35:27	2	want to turn now to LDL particle size.
12:35:27	3	BY MR. ELIKAN:
12:35:32	4	Q Did you review other prior art that suggested as Mori did
12:35:37	5	that DHA, but not EPA, increased LDL particle size?
12:35:42	6	A Yes.
12:35:43	7	MR. ELIKAN: Can we have PX 563, please.
12:35:48	8	And, Your Honor, this has been pre-admitted it's
12:35:51	9	article by Woodman, and it's titled "Docosahexanoic Acid But
12:35:59	10	Not Icosapentaenoic Acid Increases LDL Particle Size in
12:36:05	11	Treated Hypertensive Type 2 Diabetic Patients," and the
12:36:12	12	parties have stipulated to it as prior in paragraph 74.
12:36:16	13	THE COURT: 74?
12:36:19	14	MR. ELIKAN: Yes.
12:36:19	15	THE COURT: Thank you.
12:36:19	16	BY MR. ELIKAN:
12:36:22	17	Q Now, is Dr. Mori a coauthor of this article?
12:36:28	18	A Yes, he's a second author.
12:36:34	19	MR. ELIKAN: I want to go to highlight the first
12:36:37	20	sentence in the last paragraph in the left-hand column
12:36:43	21	beginning with "these data."
12:36:43	22	BY MR. ELIKAN:
12:36:48	23	Q What do the authors report here about the relative
12:36:51	24	effects of EPA and DHA on LDL particle size?
12:36:56	25	A They note that the data that they're reporting in this

12:36:59	1	paper supports their previous study in overweight
12:37:03	2	hypercholesterolemic subjects which is the Mori paper from the
12:37:11	3	American Journal of Clinical Nutrition which is the Mori that
12:37:11	4	we had been discussing, in whom LDL particle size increased
12:37:16	5	after supplementation with DHA but not EPA.
12:37:19	6	Q And you were referring to the citation two in the
12:37:24	7	references, Doctor?
12:37:25	8	A Yes, counsel.
12:37:26	9	Q And is that the same Mori article that Dr. Heinecke
12:37:32	10	testified about from 2000?
12:37:34	11	A Yes.
12:37:34	12	Q Let's look at the last paragraph of the article. So it's
12:37:39	13	in the middle column.
12:37:41	14	What do the authors conclude about the therapeutic
12:37:46	15	value of DHA as compared to EPA?
12:37:49	16	A They conclude that supplementation with purified DHA
12:37:54	17	increases LDL particle size, reduces serum triglycerides and
12:38:00	18	increases HDL-2 cholesterol as well as improves vascular
12:38:06	19	function and blood pressure. Therefore, for subjects with
12:38:09	20	type 2 diabetes, DHA may have more therapeutic value than EPA
12:38:16	21	as food additive
12:38:17	22	Q So oh, I'm sorry.
12:38:19	23	A but longer term prospective studies are needed to
12:38:23	24	address the issue.
12:38:24	25	Q And were the findings about LDL particle size I take
		1

12:38:27	1	it they're fully consistent with Mori 2000 based on your
12:38:31	2	analysis of reference to in the citation to?
12:38:35	3	A They are.
12:38:35	4	Q All right. I want to go back to PDX 6-20 and move to the
12:38:40	5	next factor, blood pressure.
12:38:42	6	As of March 2008, would the person of ordinary skill
12:38:47	7	in the art have understood that blood pressure was related to
12:38:50	8	cardiovascular health?
12:38:51	9	A Oh, yes, all over the world.
12:38:55	10	Q And why is that? What's the relationship between the
12:39:00	11	two?
12:39:00	12	A As blood pressure increases, risk for cardiovascular
12:39:04	13	disease increases, and in patients with elevated blood
12:39:08	14	pressure, it's important to reduce the blood pressure to
12:39:11	15	reduce risk.
12:39:12	16	Q And what did the prior art have to say about the relative
12:39:15	17	effects of EPA and DHA on blood pressure?
12:39:19	18	A That DHA had more favorable effects on blood pressure
12:39:23	19	than EPA.
12:39:24	20	MR. ELIKAN: Let's turn to PX 565, which has
12:39:32	21	been pre-admitted, Your Honor, and the parties have stipulated
12:39:35	22	to it as prior art and that's in paragraph 76.
12:39:40	23	THE COURT: Thank you.
12:39:40	24	BY MR. ELIKAN:
12:39:42	25	Q And what is PX 565?

12:39:44	1	A This is a paper published in the journal Hypertension in
12:39:49	2	1999, another paper by Trevor Mori entitled, "DHA But Not EPA
12:39:55	3	Lowers Ambulatory Blood Pressure in Heart Rate in Humans."
12:40:00	4	MR. ELIKAN: And can we highlight the second
12:40:02	5	sentence of the abstract on page 2, Mr. Brooks.
12:40:02	6	BY MR. ELIKAN:
12:40:13	7	Q What was the stated aim of the study?
12:40:15	8	A The aim of the study was to determine whether there were
12:40:18	9	significant differences in the effects of purified EPA or DHA
12:40:22	10	on ambulatory blood pressure and heart rate in humans.
12:40:28	11	MR. ELIKAN: And can we highlight the sentence
12:40:30	12	beginning with purified DHA further down this paragraph.
12:40:30	13	BY MR. ELIKAN:
12:40:38	14	Q What does Mori report here about the relative effects of
12:40:43	15	DHA and EPA on blood pressure?
12:40:45	16	A That purified DHA but not EPA reduced ambulatory blood
12:40:50	17	pressure and heart rate in mildly hyperlipidemic men. The
12:40:59	18	results of this study suggest that DHA is the principal
12:40:59	19	omega-3 fatty acid in fish and fish oils that is responsible
12:41:03	20	for their blood pressure and heart lowering effects in humans.
12:41:10	21	Q You said heart lowering
12:41:11	22	A Heart rate lowering, I'm sorry.
12:41:12	23	Q We haven't' spent much time with heart rate. Is heart
12:41:16	24	rate connected to cardiovascular health?
12:41:19	25	A Yes, there are study to show that for patients who have
		1

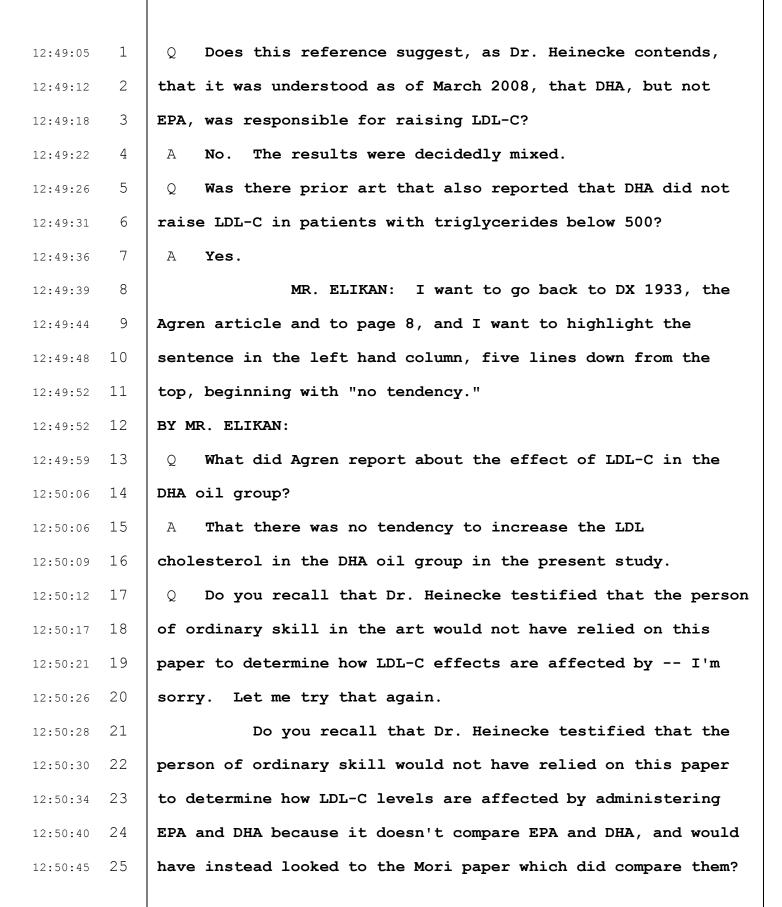
12:41:22	1	elevated baseline heart rates, they live in something of a
12:41:26	2	hyperdynamic state, and over time this does incur injuries to
12:41:35	3	heart muscle as well as blood vessels.
12:41:36	4	MR. ELIKAN: I want to turn now PX 386. This is
12:41:39	5	article by Dr. McLennan that the parties have stipulated to as
12:41:44	6	prior art in paragraph 68.
12:41:47	7	THE COURT: Thank you.
12:41:47	8	BY MR. ELIKAN:
12:41:54	9	Q What's the title?
12:41:55	10	A This paper was published in the European Journal of
12:42:00	11	Pharmacology in 1996. It is entitled "The Cardiovascular
12:42:02	12	Protective Role of DHA."
12:42:05	13	MR. ELIKAN: And can we highlight the second
12:42:07	14	sentence of the abstract.
12:42:07	15	BY MR. ELIKAN:
12:42:08	16	Q What did the author state was the goal of this study?
12:42:13	17	A They examined the roles of EPA and DHA which are the
12:42:17	18	principal omega-3 polyunsaturated fatty acids regarded as
12:42:27	19	candidates for cardio-protected actions.
12:42:27	20	Q I want to look at the last sentence of the abstract.
12:42:29	21	What did the authors conclude from the study?
12:42:35	22	A They conclude that purified omega-3 polyunsaturated fatty
12:42:44	23	acids mimic the cardiovascular actions of fish oils and
12:42:44	24	implied that DHA may be the principal active component
12:42:49	25	conferring cardiovascular protection.

12:42:52	1	MR. ELIKAN: Now, turning to page 6, I want to
12:42:56	2	highlight a sentence in the left-hand column about nine lines
12:43:02	3	down beginning with "nevertheless."
12:43:02	4	BY MR. ELIKAN:
12:43:06	5	Q What did the authors state here about the relative
12:43:08	6	effects of EPA and DHA on blood pressure?
12:43:11	7	A That the DHA reduced blood pressure more than a
12:43:16	8	combination of EPA and DHA, which in turn reduced blood
12:43:21	9	pressure better than EPA by itself.
12:43:30	10	Q And what's the clear order?
12:43:34	11	A The order is DHA was better than EPA plus DHA, and that
12:43:39	12	EPA plus DHA was better than the EPA by itself.
12:43:44	13	Q Do you recall that Dr. Heinecke testified that LDL-C was
12:43:48	14	the major determinate of cardiovascular risk that a person of
12:43:54	15	ordinary skill in the art would have taken into account when
12:43:57	16	deciding which particular omega-3 fatty acid formulation to
12:44:03	17	pursue?
12:44:03	18	A Yes.
12:44:04	19	${\mathbb Q}$ Do you agree that in evaluating the overall profile of
12:44:09	20	DHA and EPA, a person of ordinary skill in the art would have
12:44:13	21	considered only LDL-C effects and not the other factors
12:44:18	22	related to cardiovascular health that we've been discussing?
12:44:21	23	A Well, as I mentioned, it's very important to perform a
12:44:26	24	comprehensive inventory of all risk factors in patients at
12:44:28	25	risk for cardiovascular disease, and so the more comprehensive

12:44:33	1	approach would argue that the DHA would be beneficial for
12:44:37	2	multiple things, you would want to keep it.
12:44:39	3	Q And would that have been the view of the person of
12:44:43	4	ordinary skill in the art, keep the DHA?
12:44:44	5	A Yes.
12:44:48	6	Q And on factors other than LDL-C, which I'm setting aside
12:44:53	7	for the moment, what did the prior art suggest as far as
12:44:56	8	whether DHA or EPA had advantages?
12:45:00	9	A That the DHA still had outweighing advantages compared to
12:45:04	10	the EPA.
12:45:05	11	Q Now, let's focus on LDL-C. Do you recall that
12:45:09	12	Dr. Heinecke testified that as of 2008, EPA would offer an
12:45:14	13	advantage over DHA in terms of LDL-C?
12:45:18	14	A Yes.
12:45:19	15	Q Do you agree with that opinion?
12:45:20	16	A No.
12:45:22	17	Q Did any of the prior art that Dr. Heinecke relied upon
12:45:27	18	suggest that EPA would offer an advantage over DHA in terms of
12:45:32	19	LDL-C in patients with very high triglycerides?
12:45:36	20	A No.
12:45:37	21	Q Now, let's talk about patients with triglycerides below
12:45:42	22	500, those who are not severely hypertriglyceridemic. For
12:45:47	23	those patients, did the prior art as a whole suggest that EPA
12:45:52	24	had advantages over DHA in terms of LDL-C effects?
12:45:56	25	A No.

12:45:56	1	Q Do you recall that Dr. Heinecke testified that in Mori
12:46:05	2	and Kurabayashi LDL-C did not increase in the patients to whom
12:46:10	3	EPA was given?
12:46:11	4	A Yes.
12:46:11	5	${\mathbb Q}$ Taking the prior art as a whole, and again focusing on
12:46:16	6	the patients with triglycerides below 500, did the prior art
12:46:22	7	consistently report that EPA did not raise LDL-C?
12:46:26	8	A It did not.
12:46:27	9	Q Did you review prior art reporting that EPA raised LDL-C
12:46:33	10	in patients with triglycerides less than 500?
12:46:36	11	A Yes.
12:46:38	12	MR. ELIKAN: Let's look at an example. Can we
12:46:40	13	have DX 1961. And this will be we can skip to the front
12:46:49	14	page. I'm sorry, the page with the title, page 3.
12:46:54	15	This is 1996 article about Dr. Rambjør that
12:46:58	16	Dr. Heinecke discussed. It's already been admitted, Your
12:47:01	17	Honor, and the parties have stipulated that it is prior art,
12:47:04	18	and that's in paragraph 72.
12:47:07	19	THE COURT: Thank you.
12:47:07	20	BY MR. ELIKAN:
12:47:09	21	$\mathbb Q$ Let's turn to page 3, which is where we are now, and the
12:47:13	22	first sentence of the abstract. What was the aim of the
12:47:17	23	study?
12:47:18	24	A It was to determine whether EPA or DHA or both were
12:47:23	25	responsible for the triglyceride lowering effects of fish oil.

12:47:28	1	Q Let's highlight the second sentence.
12:47:30	2	What formulations did Dr. Rambjør test in the
12:47:36	3	different arms in this study?
12:47:38	4	A 91 percent pure EPA, 83 percent pure DHA, and a fish oil
12:47:45	5	concentrate that was comprised of 41 percent EPA and
12:47:50	6	23 percent DHA, and then they used an olive oil placebo.
12:47:58	7	MR. ELIKAN: I'm going to go now to page 5 and
12:48:00	8	pull up Table 3. And let's look at the EPA arm. Can we
12:48:06	9	highlight the
12:48:06	10	BY MR. ELIKAN:
12:48:08	11	Q What is what are the number of subjects in the EPA
12:48:12	12	arm?
12:48:13	13	A The EPA arm had 25 persons.
12:48:17	14	Q That's indicated by the N equals 25?
12:48:20	15	A Yes.
12:48:21	16	Q And what was the LDL-C effect on the EPA arm?
12:48:25	17	A In the EPA arm the LDL increased in a statistically
12:48:31	18	significant way from 2.81 millimoles per liter to
12:48:36	19	2.97 millimoles per liter.
12:48:42	20	Q You testified that the EPA arm in Mori had 19 subjects?
12:48:46	21	A Yes.
12:48:47	22	Q How does the sample size in Mori compare to the number of
12:48:52	23	subjects in the EPA arm in this study?
12:48:56	24	A There are slightly more persons in this at 25 here
12:49:02	25	compared to 19 in Trevor Mori's paper.



12:50:49	1	A Yes.
12:50:50	2	Q Did Hayashi compare EPA and DHA?
12:50:56	3	A No.
12:50:56	4	Q Did Kurabayashi?
12:50:57	5	A No.
12:51:06	6	MR. ELIKAN: One moment, Your Honor. The
12:51:08	7	Court's indulgence.
12:51:20	8	THE COURT: Yes.
12:51:22	9	MR. ELIKAN: Can we go back to the table, please
12:51:24	10	in Rambjør that we were looking at before. It's Table 3 on
12:51:34	11	page 5.
12:51:34	12	BY MR. ELIKAN:
12:51:39	13	Q Was the rise that you mentioned in LDL-C in EPA
12:51:46	14	statistically significant?
12:51:48	15	A Yes.
12:51:49	16	Q I want to turn now DX 1949. It's the 1996 Conquer
12:52:04	17	reference that Dr. Heinecke discussed.
12:52:08	18	And, Your Honor, it's been preadmit, and the parties
12:52:10	19	have stipulated that it's prior art in paragraph 84.
12:52:13	20	THE COURT: Thank you.
12:52:13	21	BY MR. ELIKAN:
12:52:17	22	${\mathbb Q}$ Turning to the left-hand column of page 4, the second
12:52:20	23	sentence of the last paragraph, how did Conquer characterize
12:52:27	24	the effect of DHA supplementation on LDL-C?
12:52:32	25	A They note that,

12:52:34	1	"Although no significant alteration was found
12:52:37	2	in the total and LDL cholesterols with DHA
12:52:41	3	supplementation"
12:52:42	4	Q What was that again? Can you say that in plain English?
12:52:45	5	A They did not find that DHA increased either LDL or total
12:52:54	6	cholesterol.
12:52:58	7	Q And do these references that we've looked at now Conquer
12:53:05	8	and Rambjør, do they suggest that even in patients who aren't
12:53:16	9	severely hypertriglyceridemic, it was understood that DHA but
12:53:22	10	not EPA was responsible for raising LDL-C?
12:53:25	11	A No.
12:53:27	12	Q In your work on this case, did you review prior art that
12:53:31	13	observed that there was inconsistency in the reported LDL-C
12:53:35	14	effects of omega-3 fatty acids?
12:53:37	15	A Yes, counsel.
12:53:38	16	MR. ELIKAN: Let's go back to DX 1532, Hayashi,
12:53:44	17	and I want to look at the sentence on the third page under
12:53:49	18	Introduction beginning on the 7th line. The sentence begins
12:53:53	19	with the word "data."
12:53:53	20	BY MR. ELIKAN:
12:53:57	21	Q And what did Hayashi observe about the data on the effect
12:54:02	22	of fish oils on LDL-C?
12:54:04	23	A Dr. Hayashi notes that data on the effects fish oils,
12:54:08	24	rich in omega-3 fatty acids, plasma LDL and HDL levels were
12:54:08	25	contradictory in some cases.

12:54:15	1	MR. ELIKAN: And I would like to go now to
12:54:21	2	PX 909. This is an article by Dr. Geppert, it's been
12:54:25	3	pre-admitted, and the parties have stipulated to it as prior
12:54:30	4	art in paragraph 55.
12:54:33	5	THE COURT: Thank you.
12:54:33	6	BY MR. ELIKAN:
12:54:41	7	Q Can we turn to page 3. What's the title of the article?
12:54:44	8	A This is paper published in the British Journal of
12:54:47	9	Nutrition in 2006 entitled "Microalgal DHA Decreases Plasma
12:54:47	10	Triacylglycerol Glycerol in Normolipidemic Vegetarians: A
12:54:47	11	Randomized Trial."
12:55:00	12	Q So this is 2006, two years before the priority date.
12:55:03	13	A Yes.
12:55:04	14	MR. ELIKAN: Let's go to page 8, the first full
12:55:08	15	paragraph in the left-hand column, and can we highlight the
12:55:12	16	sentence beginning in the 6th line with the words
12:55:15	17	"inconsistent effects."
12:55:15	18	BY MR. ELIKAN:
12:55:21	19	Q What did the authors observe here about the reported
12:55:24	20	LDL-C effects of DHA?
12:55:28	21	A "Inconsistent effects of DHA on LDL
12:55:32	22	cholesterol levels were reported in previous studies.
12:55:35	23	Some investigators found that LDL cholesterol raising
12:55:39	24	effect of DHA or no effect on LDL cholesterol
12:55:44	25	levels."

12:55:45	1	Q So it was inconsistent?
12:55:45	2	A Yes.
12:55:47	3	Q As you said?
12:55:47	4	A Yes.
12:55:47	5	Q Do you recall that Dr. Heinecke testified that the person
12:55:51	6	of ordinary skill in the art would have disregarded Rambjør
12:55:53	7	and Conquer after Dr. Mori published his article in 2000?
12:55:59	8	A Yes.
12:56:01	9	Q Did this 2006 article, six years after Mori, two years
12:56:06	10	before the priority date, cite to both Conquer and Rambjør as
12:56:10	11	well as Mori?
12:56:12	12	A It sure did.
12:56:13	13	Q Is that in the paragraph or the sentence, the long
12:56:16	14	sentence that we were just looking at?
12:56:18	15	A They are.
12:56:24	16	Q Would a person of ordinary skill in the art have looked
12:56:29	17	only at Mori's 2000 paper or instead the prior art as a whole
12:56:35	18	when assessing the relative LDL-C effects of DHA and EPA?
12:56:39	19	A The prior art as a whole.
12:56:41	20	Q In your work on this case, did you review any prior art
12:56:45	21	that surveyed the literature as a whole and drew conclusions
12:56:50	22	about the relative effects of EPA and DHA on lipid effects and
12:56:56	23	other parameters including LDL-C?
12:56:59	24	A Yes, counsel.
12:57:00	25	Q And what was that? What reference?

12:57:03	1	A It's a reference by Clemmons von Schacky.
12:57:09	2	MR. ELIKAN: Let's go DX 1605. This has been
12:57:14	3	pre-admitted, and the parties have stipulated, Your Honor,
12:57:18	4	that it's prior art. That's in paragraph 82.
12:57:18	5	BY MR. ELIKAN:
12:57:22	6	Q Do you recall that Dr. Heinecke testified that von
12:57:26	7	Schacky's a review and a I'm quoting now, summary of the
12:57:31	8	author's interpretation of what the literature showed?
12:57:35	9	A Yes.
12:57:35	10	Q Do you agree with him that von Schacky is a review
12:57:39	11	article?
12:57:40	12	A Yes, and review articles do reflect the opinions and the
12:57:45	13	insights of the author.
12:57:46	14	Q And do you agree with him that it is a summary of what
12:57:50	15	the literature showed?
12:57:51	16	A Yes.
12:57:53	17	MR. ELIKAN: An we have page 1, and can we blow
12:57:57	18	up the bottom of the page.
12:57:57	19	BY MR. ELIKAN:
12:58:01	20	Q What was this summary of what the literature showed
12:58:04	21	compiled?
12:58:04	22	A This was published in 2006.
12:58:06	23	$\mathbb Q$ And I want to direct your attention to Table 1 on page 9.
12:58:13	24	What did the authors provide as a description of
12:58:16	25	Table 1?

12:58:17	1	A This is a summary of the effects of purified EPA and DHA
12:58:22	2	as observed in human studies on a variety of risk factors and
12:58:29	3	only significant differences were considered for the
12:58:31	4	inclusion.
12:58:32	5	Q And the authors note that the table includes arrows?
12:58:36	6	A Yes.
12:58:36	7	Q What do they say the arrows denote?
12:58:39	8	A Well, they are semi-quantitative reflections of the
12:58:44	9	findings from the literature.
12:58:45	10	Q At the bottom of the table under Note, what generally
12:58:50	11	does von Schacky identify as the source of information for the
12:58:53	12	contents of the table?
12:58:55	13	A There are 14 manuscripts noted there, including
12:58:59	14	manuscripts that we have been discussing here at trial today.
12:59:02	15	Q I want to look at what's reported in the table.
12:59:05	16	Based on their review of the literature, what did
12:59:08	17	the authors of this von Schacky reference conclude about the
12:59:12	18	relative LDL-C effects of EPA and DHA?
12:59:17	19	A Both EPA and DHA received a single upward going arrow,
12:59:24	20	meaning that on balance both omega-3 fish oils EPA and DHA
12:59:32	21	increased LDL cholesterol.
12:59:35	22	Q Is there anything in this table that indicates that
12:59:39	23	different effects on LDL-C were obtained with EPA and DHA?
12:59:44	24	A No.
12:59:45	25	${\mathbb Q}$ And looking again at the Note, below Table 1, do the

12:59:50	1	authors include among the references they considered Mori?
12:59:56	2	A Yes.
12:59:56	3	Q The reference that Dr. Heinecke relied upon?
12:59:59	4	A Yes.
01:00:00	5	Q And did Dr. Von Schacky and his co-authors also consider
01:00:06	6	the Rambjør reference?
01:00:07	7	A Yes.
01:00:07	8	Q I want to ask you about some other parameters in this
01:00:11	9	table starring with triglycerides. What did von Schacky
01:00:17	10	conclude about the relatives effects of EPA and DHA on
01:00:22	11	triglycerides?
01:00:23	12	A Dr. Von Schacky concluded that they both exerted a robust
01:00:27	13	effect on triglyceride reduction as indicated by two down
01:00:31	14	going arrows.
01:00:33	15	Q Does von Schacky suggest that EPA offers some advantage
01:00:38	16	over DHA in terms of triglyceride lowering?
01:00:40	17	A No, they have each two down going arrows.
01:00:45	18	Q And does this table suggest that the only consideration
01:00:49	19	for assessing cardiovascular and lipid effects is LDL?
01:00:55	20	A No.
01:00:57	21	Q Let's look at some of the other factors.
01:01:01	22	You mentioned that HDL was viewed as
01:01:07	23	A Beneficial.
01:01:07	24	Q beneficial. Could we call that cardio-protective?
01:01:11	25	A Yes, that's good.

01:01:12	1	Q Did the authors of von Schacky conclude that EPA would
01:01:17	2	offer an advantage over DHA in terms of effects on HDL?
01:01:22	3	A A little bit open-ended here. He put a question mark
01:01:26	4	next to a horizontal arrow for EPA, which would denote
01:01:31	5	neutrality. He put an upward going single arrow for DHA. But
01:01:37	6	it looks like on balance he agreed with the literature that
01:01:42	7	DHA would increase HDL with something of an equivocal neutral
01:01:49	8	effect with EPA.
01:01:51	9	Q What about in terms of blood pressure?
01:01:53	10	A EPA, neutral. DHA, reduced blood pressure as evinced by
01:01:59	11	a single down going arrow.
01:02:08	12	Q And would the person of ordinary skill in the art in
01:02:12	13	March 2008 reviewing von Schacky and the prior art as a whole,
01:02:18	14	would that person have concluded that EPA offered an advantage
01:02:22	15	over DHA with regard to blood pressure?
01:02:25	16	A No, a POSA would have find a semi-quantitative evaluation
01:02:30	17	of the available evidence very helpful because you can tell by
01:02:34	18	looking, based on number of arrows, directionality of the
01:02:39	19	arrows, what's happening here.
01:02:41	20	And almost at a glance can you look down at this
01:02:45	21	table and go point by point by point, and you would not think
01:02:49	22	that EPA was superior to DHA in terms of the whole package.
01:02:55	23	Q Okay. We talked about some of these factors. In terms
01:02:58	24	of heart rate, what did von Schacky conclude about the
01:03:02	25	relative effects of EPA and DHA on heart rate after surveying

1 01:03:07 2 01:03:08 01:03:13 3 01:03:21 4 01:03:25 5 6 01:03:27 7 01:03:33 01:03:36 8 9 01:03:40 10 01:03:42 11 01:03:46 12 01:03:49 01:03:54 13 14 01:03:58 01:04:02 15 01:04:07 16 01:04:10 17 01:04:13 18 01:04:16 19 20 01:04:19 21 01:04:22 01:04:27 22 23 01:04:31 24 01:04:34 01:04:42 25

the literature?

- A That DHA had a more pronounced effect than did EPA.
- Q And in terms of endothelial function, what did von Schacky conclude by about the relative effects of DHA and EPA after surveying the literature?
- A Yeah, endothelial function is an area of great interest and this is because if the endothelium is getting sick -- and the endothelium is the cell type that lines the inner aspect of all of our arteries.

If that cell is getting sick, that patient's cardiovascular system is getting sick, and this would be reflected by, say, capacity to induce dilatation of a blood vessel, just by way of example, cranking down, the expression of inflammatory mediators on the cell type, and actually DHA appears to improve endothelial function neutral with EPA.

- Q Is that because of the one arrow up for DHA and the sideways arrow for EPA?
- A Yes.
- Q I just want to make sure I understand.

After reviewing the literature, did von Schacky report that EPA offered an advantage over DHA in any of the parameters considered here?

A No, it did not offer an advantage for anything. It was on par for triglycerides, cholesterol and LDL.

But for blood pressure, for heart rate, endothelial

01:04:47	1	function, and possibly for HDL, DHA appeared to get better
01:04:52	2	a better semi-quantitative evaluation.
01:04:52	3	Q And if the person of ordinary skill in the art read von
01:04:59	4	Schacky, would that person have been led to get rid of the DHA
01:05:03	5	from Lovaza and use high purity EPA instead?
01:05:09	6	A No, that would not have been a logical conclusion from
01:05:12	7	this.
01:05:16	8	THE COURT: I think it's good time for our lunch
01:05:18	9	break. Is that why you were looking at your watch?
01:05:22	10	MR. ELIKAN: I figured I was about to start
01:05:24	11	something new, and I
01:05:26	12	THE COURT: Yes. As I note, I have a hearing at
01:05:27	13	1:30. I'm going to try to limit that hearing to 30 minutes,
01:05:31	14	but, to be safe, let's plan to resume at about 2:15.
01:05:38	15	I inform you of the emergency issue that we have
01:05:40	16	in the Las Vegas courthouse. I may have to schedule a call
01:05:43	17	this afternoon with the unit executives to see what that
01:05:47	18	situation is. So I'll let you know if I need to recess even
01:05:51	19	earlier than I planned at 4:30.
01:05:54	20	MR. ELIKAN: Thank you, Your Honor.
01:05:54	21	(The noon recess was taken.)
01:05:54	22	000
	23	
	24	
	25	

01:05:54	1	RENO, NEVADA, MONDAY, JANUARY 27, 2020, 2:24 P.M.
01:05:54	2	000
02:24:57	3	
02:24:57	4	THE COURT: Please be seated.
02:24:58	5	Counsel, before you resume, I do have to recess
02:25:05	6	today at 3:30 to allow me to address continued court
02:25:09	7	operations at our Las Vegas courthouse, and because I'm
02:25:14	8	cutting two hours short for today, if I need to extend the
02:25:19	9	length of trial for the next two days so that you finish as
02:25:23	10	you expected, I would consider that. I just don't know where
02:25:27	11	we will be at the end of today. But, let's resume for now and
02:25:31	12	I do need to break at 3:30.
02:25:34	13	MR. ELIKAN: Understood, Your Honor.
02:25:36	14	MR. SIPES: Your Honor, this is Christopher
02:25:37	15	Sipes for Amarin. Mr. Klein and I believe Ms. Huttner is
02:25:43	16	the court too even with this, I think we would certainly
02:25:46	17	anticipate finishing by Wednesday. And there's a possibility,
02:25:49	18	maybe if we extend, that we could finish on Tuesday, which I
02:25:52	19	think would make no one unhappy.
02:25:54	20	THE COURT: That's good.
02:25:54	21	MR. KLEIN: This is your last witness?
02:25:56	22	MR. SIPES: This is our last witness.
02:25:58	23	THE COURT: But will you have witnesses?
02:26:00	24	MR. KLEIN: Uh, we have two rebuttal witnesses
02:26:03	25	who may or may not testify depending on how the rest of this

02:26:07	1	testimony goes.
02:26:09	2	THE COURT: Ms. Huttner, do you agree with that.
02:26:13	3	MS. HUTTNER: Yeah. That's fine. There were
02:26:14	4	some other witnesses that had been pulled, so we're fine with
02:26:17	5	that.
02:26:17	6	THE COURT: Thank you. And if we finish
02:26:19	7	Tuesday, then that's great. I just don't want to
02:26:21	8	inconvenience you all because you thought you were finishing
02:26:24	9	by Wednesday, if the result of me recessing earlier today will
02:26:28	10	affect anyone's schedule. So, that's available it we need to
02:26:32	11	go longer tomorrow or Wednesday.
02:26:35	12	MR. SIPES: Thank you.
02:26:35	13	THE COURT: Thank you.
02:26:41	14	MR. ELIKAN: Your Honor, may I proceed?
02:26:42	15	THE COURT: Yes.
02:26:48	16	MR. ELIKAN: A housekeeping issue before I
02:26:50	17	resume.
02:26:50	18	We were at the beginning of my examination I
02:26:52	19	mentioned ATP III, and Your Honor referenced paragraph 41,
02:26:56	20	which is the paragraph in the stipulation which, in the of
02:27:02	21	the paragraph addressing, actually, whether the executive
02:27:05	22	summary was prior art. The paragraph relating to ATP III is
02:27:10	23	actually paragraph 64.
02:27:12	24	THE COURT: Thank you.
02:27:15	25	THE COURT: That's paragraph 64 for the record

02:27:18	1	in ECF 324, the Joint Stipulation.
02:27:22	2	MR. ELIKAN: Yes, Your Honor.
02:27:22	3	THE COURT: Thank you.
02:27:22	4	DIRECT EXAMINATION RESUMED
02:27:22	5	BY MR. ELIKAN:
02:27:31	6	Q Let's turn back to PDX 6-21. I want to focus now on the
02:27:31	7	third point.
02:27:37	8	In 2008, was there a finite or limited number of
02:27:37	9	potential options to try to solve the problem with developing
02:27:40	10	an improved treatment for severe hypertriglyceridemia?
02:27:46	11	A No.
02:27:49	12	Q Would there have been two or three options?
02:27:52	13	A No. There could have been hundreds of options.
02:27:57	14	Q And irrespective of the number of options, was it
02:28:01	15	predictable that you could avoid substantial LDL-C increases
02:28:06	16	by following any of those options?
02:28:09	17	A No, counsel.
02:28:11	18	Q And why is that?
02:28:12	19	A Because, again, the group below 500 behaved differently
02:28:20	20	than the group above 500, and there was no evidence to suggest
02:28:24	21	that any available agent behaved differently when administered
02:28:31	22	to a patient.
02:28:32	23	${\mathbb Q}$ Is that relating to the mechanism of action of the
02:28:35	24	metabolism that you described earlier?
02:28:37	25	A Yes.

02:28:37	1	Q Let's turn now to the number of options.
02:28:40	2	Would a potential option for a new treatment for
02:28:44	3	severe hypertriglyceridemia have been a new type of fibrate
02:28:49	4	products?
02:28:51	5	A Sure.
02:28:52	6	Q Could the person of ordinary skill in the art have
02:28:57	7	pursued a new type of niacin product?
02:28:57	8	A Sure.
02:28:58	9	Q An entirely new type of triglyceride lowering agent?
02:29:02	10	A Yes.
02:29:02	11	Q Combination of existing agents?
02:29:04	12	A Yes.
02:29:05	13	Q Let's talk now about omega-3 fatty acids.
02:29:09	14	Do you recall that Dr. Heinecke testified that as of
02:29:11	15	March 2008, there were not many options for potential new
02:29:17	16	omega-3 fatty acid formulations?
02:29:19	17	A Yes.
02:29:20	18	Q Do you agree with him?
02:29:21	19	A No.
02:29:21	20	Q What types of options would there have been in terms of
02:29:27	21	composition for a treatment made of omega-3 fatty acids,
02:29:33	22	potentially useful in lowering triglycerides in patients with
02:29:37	23	severe hypertriglyceridemia?
02:29:39	24	A You could have varied the ratio between the two principal
02:29:45	25	omega-3s. You could have varied the dose. You could have
		1

also introduced, as some people did, alpha-Linolenic acid. 02:29:48 1 2 You could have considered adding Omega-6s and Omega-9s. 02:29:53 02:30:00 3 list was potentially infinite. In turning to dose, would there have been a variety of 02:30:01 4 doses that a person of ordinary skill in the art might have 5 02:30:05 considered had that person wanted to develop a new omega-3 6 02:30:08 7 fatty acids formulation for treating patients with severe 02:30:14 02:30:17 8 hypertriglyceridemia? 9 Absolutely. 02:30:17 As of March 2008, did the medical literature provide a 10 02:30:19 reason not to use a 4-gram dose of an omega-3 fatty acid? 02:30:24 11 12 Α Yes. 02:30:31 02:30:31 13 Let's turn to PX 567. This is the Nilsen article, "Effect of a High Dose Concentrate of n-3 Fatty Acids or Corn 14 02:30:38 15 Oil Introduced Early After an Acute Myocardial Infarction on 02:30:44 Serum Triacylglycerol and HDL Cholesterol." 16 02:30:50 02:30:53 17 It's pre-admitted. And, Your Honor, the parties 18 have stipulated that its prior art in paragraph 77. 02:30:55 19 THE COURT: Thank you. 02:31:01 20 BY MR. ELIKAN 02:31:05 And in the left-hand column under the heading, Abstract, 21 02:31:05 02:31:09 22 what does Dr. Nilsen state as the objective of the study? 23 He notes the objective was to evaluate the effect of a 02:31:14 24 high dose ethylester concentrate of omega-3 fatty acids 02:31:18 25 administered early after an acute MI or heart attack on 02:31:23

02:31:28	1	subsequent cardiac events and serum lipids.
02:31:33	2	Q And looking at the paragraph labeled Design, right below,
02:31:38	3	what does this publication state was the dose of omega-3 fatty
02:31:41	4	acids that was studied?
02:31:43	5	A Um, they took 300 patients with an acute MI, and randomly
02:31:51	6	assigned them to either 4 grams of highly concentrated omega-3
02:31:55	7	fatty acids or corn oil, administered in a double-blind manner
02:31:59	8	over one to two years.
02:32:00	9	$\mathbb Q$ So was the dose of the omega-3 fatty acids 4
02:32:04	10	grams?
02:32:04	11	A Yes.
02:32:05	12	$\mathbb Q$ And do the 4 grams offer any benefit, in terms of cardiac
02:32:10	13	events, as compared to placebo?
02:32:12	14	A No.
02:32:13	15	Q And later in the article do the authors offer some
02:32:17	16	possible reasons for why a clinical benefit was not observed
02:32:21	17	with the 4-gram dose?
02:32:23	18	A Yes.
02:32:24	19	MR. ELIKAN: Let's go to page 5, and I want to
02:32:27	20	turn to the second to last paragraph on the right-hand side,
02:32:30	21	which is in Discussion. And can we highlight, Mr. Brooks, the
02:32:35	22	first sentence.
02:32:35	23	BY MR. ELIKAN:
02:32:38	24	Q In that sentence, what do the authors suggest as one
02:32:41	25	possible reason that the omega-3 fatty acid formulation that

02:32:45 1 they studied did not show a benefit?
02:32:49 2 A They state,

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"It is also possible that the high doses of concentrated omega-3 fatty acids applied in this study exceeded some optimal threshold level, outweighing the beneficial effect, or even leading to an apparent adverse event."

- Q Can you break that down and explain that in plain English?
- A Sure. So they were surmising that possibly they had exceeded some therapeutic threshold, and now exposed patients to hazard because, perhaps, the dose of fatty acid was toxic in some way.
- Q Was this a study of a population with very high triglycerides?
- A No.
- Q Would the person of ordinary skill in the art, let's say that person wants to develop a new formulation for very high triglycerides, would they have disregarded this warning about passing an of optimal threshold, or would they still want to make sure the drug wasn't causing problems?
- A No. They would want to make sure they haven't exceeded some optimal threshold.
- Q Let's turn back to PDX 6-22. And the last reason you have on PDX 6-22 is "Objective Indicia of Nonobviousness."

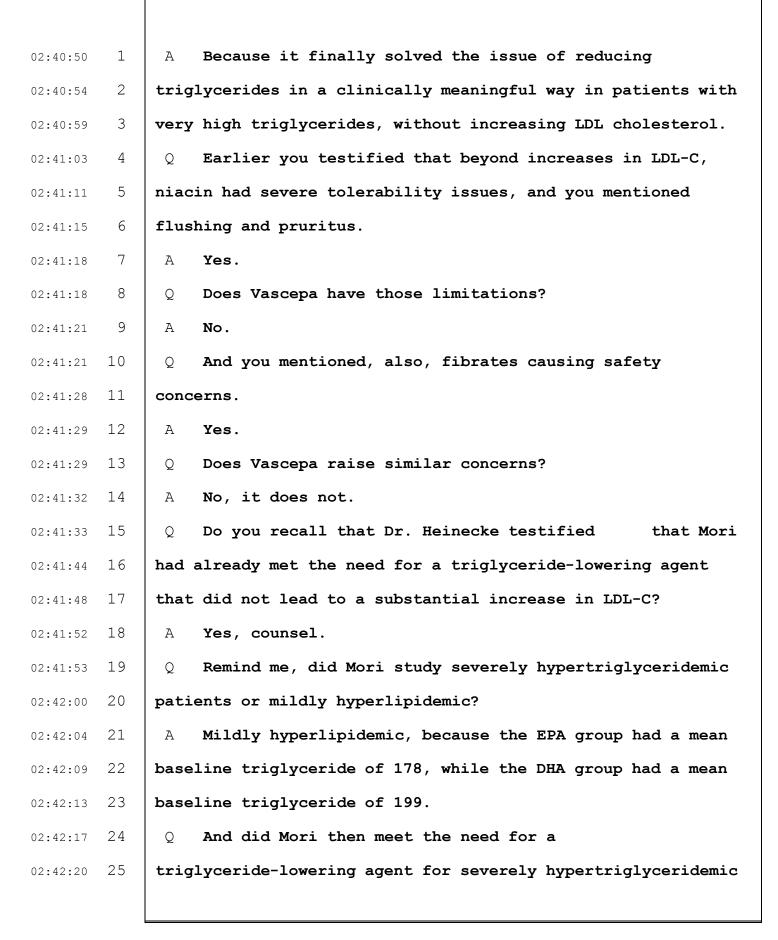
02:34:11	1	Do some of the objective indicia you have opinions
02:34:14	2	on, relate to the findings of the MARINE trial?
02:34:17	3	A Yes.
02:34:18	4	${\mathbb Q}$ And do others relate to the findings of the REDUCE-IT
02:34:20	5	trial?
02:34:21	6	A Yes.
02:34:21	7	MR. ELIKAN: And before we address the objective
02:34:24	8	indicia, I want to discuss the legal standards you used.
02:34:28	9	Can we have PDX 6-23.
02:34:28	10	BY MR. ELIKAN:
02:34:32	11	Q What was the legal standard that you applied?
02:34:35	12	A That a nexus or relationship must exist between the
02:34:39	13	evidence of objective indicia of non-obviousness and the
02:34:42	14	asserted claims.
02:34:45	15	A rebuttable presumption of nexus exists when the
02:34:49	16	objective indicia are tied to a specific product whose use
02:34:53	17	embodies the invention disclosed and claimed in the patent.
02:34:57	18	And finally, objective evidence must be reasonably
02:35:00	19	commensurate with the scope of the patent claims.
02:35:04	20	Q Let's talk about objective indicia that relates to the
02:35:08	21	MARINE trial.
02:35:10	22	Have you prepared a slide summarizing that
02:35:13	23	information?
02:35:13	24	A Yes.
02:35:14	25	Q Can we have PDX 6-24.

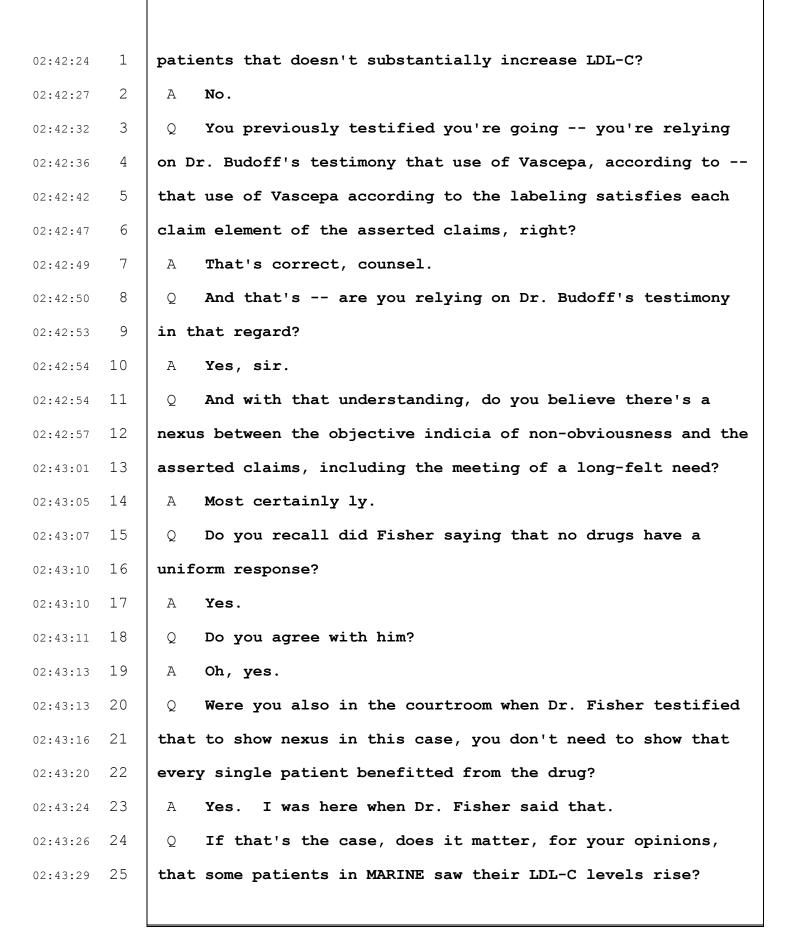
02:35:19	1	So is the first of these objective indicia relating
02:35:22	2	to the MARINE trial in satisfaction of the long-felt need?
02:35:26	3	A Yes.
02:35:27	4	Q Can you briefly explain how, in your opinion, Vascepa
02:35:30	5	satisfied and met the long-felt need?
02:35:33	6	A Well, the national health and nutrition examination
02:35:37	7	survey found that there are about three-and-a-half million
02:35:40	8	people with severe hypertriglyceridemia in the United States.
02:35:44	9	We were in desperate need of a treatment that could lower the
02:35:48	10	triglycerides safely, without raising the LDL cholesterol.
02:35:54	11	Q As of March 2008, had this issue of LDL-C increases been
02:36:02	12	long recognized as a problem?
02:36:05	13	A Yes, counsel.
02:36:05	14	Q And with triglyceride-lowering agents in patients with
02:36:10	15	very high triglycerides?
02:36:11	16	A Yes, sir.
02:36:11	17	Q And did the prior art reflect that concern?
02:36:14	18	A Oh, yes.
02:36:15	19	Q Let's turn back to PDX 1026, the Carlson reference. And
02:36:20	20	could we go to page 7, and the sentence we looked at earlier.
02:36:26	21	And Dr. Toth, am I correct that you pointed out this
02:36:33	22	sentence before,
02:36:35	23	"The finding of major clinical concern in
02:36:38	24	this report is the sometimes quite substantial rise
02:36:41	25	in LDL cholesterol"?

02:36:42	1	A Yes. We did highlight that sentence earlier.
02:36:45	2	MR. ELIKAN: Can we go to the first page, Mr.
02:36:47	3	Brooks, and if we blow-up the top.
02:36:47	4	BY MR. ELIKAN:
02:36:56	5	Q And this article is from 1977?
02:36:58	6	A Yes.
02:36:59	7	Q So that's more than 30 years before March 2008, right?
02:37:03	8	A Yes.
02:37:04	9	${\mathbb Q}$ Is there other prior art published after 1977 that
02:37:09	10	reflects the concern about the effect of triglyceride-lowering
02:37:13	11	agents on LDL-C and patients with triglycerides?
02:37:17	12	A Yes.
02:37:18	13	Q Let's turn to PX 964.
02:37:23	14	And, Your Honor, this is a the Lopid PDR entry.
02:37:28	15	It's been pre-admitted and the parties have stipulated to it
02:37:31	16	as prior art. And that's in paragraph 103.
02:37:35	17	THE COURT: Thank you.
02:37:37	18	MR. ELIKAN: Can we pull up page 2 of the Lopid
02:37:40	19	PDR, and I want to look in the right-hand column, item number
02:37:45	20	2, under Indications and Usage. And I want to zero in on that
02:37:51	21	paragraph, if we can.
02:37:52	22	Can we make it larger?
02:37:53	23	Can we highlight the two sentences about midway
02:37:57	24	down the paragraph, starting with "patients with significantly
02:38:01	25	elevated triglycerides."

02:38:01	1	BY MR. ELIKAN:
02:38:07	2	${\mathbb Q}$ What does the Lopid labeling say? What does it report in
02:38:14	3	that sentence?
02:38:14	4	A It states,
02:38:15	5	"Patients with significantly elevated
02:38:17	6	triglycerides should be closely observed when treated
02:38:20	7	with gemfibrozil. In some patients with high
02:38:23	8	triglyceride levels, treatment with gemfibrozil is
02:38:26	9	associated with a significant increase in LDL
02:38:29	10	cholesterol."
02:38:31	11	${\mathbb Q}$ So am I correct that this is talking about patients with
02:38:38	12	high triglyceride levels in that second sentence?
02:38:41	13	A Yes, sir.
02:38:41	14	Q Would a person of ordinary skill in the art in 2008
02:38:47	15	have understood that LDL-C increases would be of greater
02:38:51	16	concern in patients with very high triglycerides, or lesser?
02:38:55	17	A Please state that again.
02:38:58	18	Q Would a person of ordinary skill in the art understood
02:39:04	19	that LDL-C increases would be an even greater concern in
02:39:08	20	patients with very high triglycerides?
02:39:11	21	A It would be a greater concern in patients with very high
02:39:15	22	triglycerides.
02:39:15	23	Q Let's turn to DX1531.
02:39:20	24	And, Your Honor, this also has been pre-admitted.
02:39:23	25	It's a Harris article. "Safety and Efficacy of Omacor in

02:39:27	1	Severe Hypertriglyceridemia." And it's also been stipulated
02:39:33	2	to as prior art in paragraph 42.
02:39:37	3	THE COURT: Thank you.
02:39:37	4	BY MR. ELIKAN:
02:39:41	5	Q Do you recall Dr. Heinecke's testimony that this article
02:39:44	6	studied Lovaza here called Omacor and reported that
02:39:50	7	administering it to patients with very high triglycerides
02:39:53	8	resulted in an increase of LDL-C of 31 percent and this and
02:39:58	9	that this represented a very significant increase in LDL-C?
02:40:03	10	A Yes.
02:40:03	11	Q Do you agree with him?
02:40:05	12	A Yes.
02:40:05	13	Q Is Harris 1997 another example of LDL-C increases
02:40:12	14	associated with triglyceride-lowering agents in patients with
02:40:16	15	very high triglycerides?
02:40:18	16	A Yes.
02:40:18	17	Q Now, we looked at publications from 1977, 1990, and 1997,
02:40:28	18	all reporting issues with increased LDL-C associated with
02:40:33	19	treatment of very high triglycerides. Did this remain a
02:40:37	20	concern as of March 2008?
02:40:39	21	A Yes, because the issue wasn't solved.
02:40:41	22	Q In your opinion, did Vascepa address those concerns and,
02:40:46	23	in the process, meet a long-felt need?
02:40:48	24	A Yes.
02:40:49	25	Q And why is that?





02:43:34	1	A No.
02:43:35	2	Q Or that some patients saw their apo B go up?
02:43:40	3	A No.
02:43:40	4	Q On average, how did patients with triglyceride levels
02:43:45	5	above a 500 respond in terms of their LDL-C? Did the levels
02:43:50	6	go up or down?
02:43:51	7	A On average, they went down just a little bit. And I
02:43:54	8	would say they remained neutral.
02:43:57	9	Q On average, how did patients with triglyceride levels
02:44:01	10	above 500 respond in terms of their apo B? Did it go up or
02:44:06	11	down?
02:44:06	12	A It went down.
02:44:07	13	Q Let's turn back to PDX 6-26, your summary slide on
02:44:12	14	objective indicia relating to MARINE. I want to discuss now
02:44:16	15	unexpected benefits.
02:44:18	16	In your work on this case, have you reviewed any
02:44:21	17	publications expressing the view that Vascepa's ability to
02:44:25	18	lower triglycerides and avoid LDL-C increases in patients with
02:44:31	19	very high triglycerides was unexpected?
02:44:34	20	A Yes, counsel.
02:44:34	21	Q Let's turn to PX 833.
02:44:38	22	What is it?
02:44:39	23	A This is an editor's roundtable on hypertriglyceridemia,
02:44:44	24	published in the American Journal of Cardiology.
02:44:46	25	Q And when was it published?

02:44:52	1	A I believe 2013.
02:44:54	2	If we could scroll down.
02:44:58	3	2013.
02:44:59	4	Q And what topic did this publication concern?
02:45:02	5	A Hypertriglyceridemia.
02:45:06	6	Q At the top of the publication, do you see the names of
02:45:09	7	the participants are listed?
02:45:11	8	A I do.
02:45:12	9	Q Who were these people?
02:45:14	10	A Dr. Vincent Friedewald, of the Friedewald Equation;
02:45:19	11	Christie Ballantyne; Harold Bays; and Peter Jones.
02:45:24	12	Q Are they prominent, well-respected doctors?
02:45:26	13	A They are.
02:45:27	14	Q And did you review this article in forming your opinions
02:45:30	15	in this case?
02:45:30	16	A I did.
02:45:32	17	MR. ELIKAN: We'd move for admission of
02:45:32	18	admission of PX 833.
02:45:37	19	MR. KLEIN: No objection.
02:45:37	20	THE COURT: 833 is admitted.
02:45:37 02:45:37	21	(Plaintiffs' Exhibit 833 received in evidence.)
02:45:37	22	MR. ELIKAN: Can we pull up the left-hand column
02:45:41	23	of page 6.
02:45:41	24	BY MR. ELIKAN:
02:45:42	25	Q Do you see a statement by Mr. Harold Bays?

02:45:45	1	A Yes.
02:45:46	2	MR. ELIKAN: Can we highlight the last sentence.
02:45:46	3	BY MR. ELIKAN:
02:45:49	4	Q What does Dr. Bays have to say there?
02:45:52	5	A He states,
02:45:53	6	"Two surprising results of MARINE were a
02:45:55	7	reduction in serum apo B, and failure of LDL-C to
02:46:01	8	rise."
02:46:01	9	Q And in a subsequent response to a question posed by
02:46:05	10	Dr. Friedewald, "why were the apo B and LDL-C results a
02:46:09	11	surprise," how did Dr. Bays explain why he felt there was a
02:46:13	12	surprise?
02:46:13	13	A He notes they were a surprise because prior studies of
02:46:17	14	EPA plus DHA showed little change in apo B. And in patients
02:46:22	15	with very high triglycerides at baseline, EPA and DHA
02:46:27	16	increased LDL-C by as much as 45 percent.
02:46:32	17	Q Do you recall that Dr. Heinecke testified that it was
02:46:35	18	expected that you could lower triglycerides without increasing
02:46:38	19	LDL-C?
02:46:39	20	A Yes.
02:46:39	21	Q I'd like to pose a similar question to the one that Dr.
02:46:43	22	Heinecke addressed, but I need you to listen carefully because
02:46:49	23	I'm going to add a clarification at the end the question.
02:46:52	24	Was it unexpected that you could lower triglycerides
02:46:56	25	without increasing LDL-C, in patients with very high

02:47:00	1	triglycerides?
02:47:01	2	A Absolutely.
02:47:02	3	Q In March of 2008, was there a preparation of omega-3
02:47:11	4	fatty acids that had been approved by FDA for severe
02:47:16	5	hypertriglyceridemia?
02:47:16	6	A Yes, counsel.
02:47:17	7	Q And what was that?
02:47:22	8	A That was Lovaza.
02:47:23	9	Q In your opinion, would the person of ordinary skill in
02:47:26	10	the art have formed an expectation about the LDL-C effects in
02:47:33	11	patients with very high triglycerides based on Lovaza or based
02:47:34	12	on Mori?
02:47:35	13	A Based on Lovaza.
02:47:38	14	Q In your opinion, what was the closest prior art to the
02:47:42	15	claimed invention as of March 2008?
02:47:45	16	A It would have been Lovaza.
02:47:46	17	Q And why is that?
02:47:47	18	A Because it, too, was an omega-3 fatty acid formulation,
02:47:51	19	and it was the only omega-3 fatty acid formulation that had
02:47:55	20	been studied in patients with severe hypertriglyceridemia or
02:47:59	21	very high triglycerides.
02:48:01	22	Q Was it also the only omega-3 that had been approved for
02:48:06	23	treatment of severe hypertriglyceridemia, or were there
02:48:10	24	others?
02:48:10	25	A There were no others. It was the only approved

02:48:13	1	formulation of omega-3s.
02:48:15	2	Q And compared to Lovaza, would a person of ordinary skill
02:48:20	3	in the art, in March 2008, have found it unexpected that
02:48:25	4	Vascepa could avoid substantial increases in LDL-C in patients
02:48:31	5	with very high triglycerides?
02:48:33	6	A Yes, indeed.
02:48:35	7	Q And would you characterize the avoidance of LDL-C
02:48:41	8	increases with the claimed invention as a mere difference in
02:48:46	9	degree over Lovaza or, instead, as a difference in kind?
02:48:50	10	A It is right down the middle a difference in kind.
02:48:53	11	Q And why is that?
02:48:54	12	A Because it solved the problem. Lovaza did not solve the
02:49:00	13	problem. Lovaza allowed for, in some cases a massive
02:49:05	14	elevation LDL cholesterol. Vascepa neutralized the problem.
02:49:10	15	MR. ELIKAN: Let's turn back to PDX 6-27. I
02:49:15	16	want to discuss "Praise."
02:49:16	17	Can we pull up PDX 6-9.
02:49:16	18	BY MR. ELIKAN:
02:49:21	19	Q And you'll recall earlier we discussed these references,
02:49:24	20	the Fialkow and Castaldo references?
02:49:27	21	A Yes.
02:49:27	22	Q In your opinion, are these references examples of praise
02:49:31	23	for Vascepa's ability to lower triglycerides in patients with
02:49:35	24	very high triglycerides without substantially increasing
02:49:39	25	LDL-C?

02:49:40	1	A Yes.
02:49:41	2	Q And we discussed the O'Riordan article earlier, in which
02:49:47	3	doctors Nissen, McGuire and Bays all expressed enthusiasm for
02:49:53	4	the MARINE trial results, right?
02:49:54	5	A Yes.
02:49:55	6	Q Now, Dr. Heinecke disputes that this is praise for
02:49:58	7	Vascepa. Do you agree with Dr. Heinecke?
02:50:00	8	A No.
02:50:00	9	Q Do you believe that the initial caveats that Dr. Nissen
02:50:05	10	expressed, eliminate his statement that Vascepa gives you all
02:50:10	11	the benefits all the benefit without the downside?
02:50:16	12	A Dr. Nissen would never say that if he didn't mean it.
02:50:21	13	Yes, he meant it irrespective of the caveats.
02:50:25	14	Q Let's turn now to apo B.
02:50:28	15	Earlier we were looking, a couple minutes ago, at PX
02:50:32	16	833. And I want to turn back to the statement we were looking
02:50:35	17	at. And I want to highlight again Dr. Bays' answer, the
02:50:42	18	first answers, "two surprising results."
02:50:49	19	And Dr. Toth, is he also expressing surprise about
02:50:52	20	the reduction in serum apo B?
02:50:55	21	A Yes.
02:50:55	22	Q And did he explain in the subsequent response why
02:50:59	23	Vascepa's reduction in apo B was a surprise?
02:51:03	24	A Because prior studies looking at EPA plus DHA showed
02:51:11	25	little change in apo B.

02:51:13	1	Q In your opinion, would the person of ordinary skill in
02:51:20	2	the art, in March 2008, have found it unexpected that EPA
02:51:24	3	would reduce apo B?
02:51:27	4	A Yes.
02:51:27	5	Q As of March 2008, did the prior art report that Lovaza
02:51:36	6	decreased apo B in patients with very high triglycerides?
02:51:41	7	A No, counsel.
02:51:42	8	MR. ELIKAN: Let's turn to PX 939.
02:51:47	9	And this is the Lovaza statistical review that
02:51:51	10	we looked at before.
02:51:52	11	Can we pull up page 25, Figure 7.
02:51:52	12	BY MR. ELIKAN:
02:51:59	13	Q What data is displayed in this figure?
02:52:01	14	A Counsel, you're looking at the studies from Europe, as we
02:52:06	15	described earlier during testimony, as well as the two studies
02:52:11	16	from the United States. In the European studies, the
02:52:16	17	triglycerides were under 500. In the United States, the mean
02:52:23	18	was, I believe, 812. And we are looking at box plot displays
02:52:30	19	of the data.
02:52:34	20	Q What are box plots?
02:52:35	21	A Box plots allow you to see all of the data in a study.
02:52:42	22	It shows you the dispersion of your patient findings. And the
02:52:49	23	box shows you the so-called interquartile range, the patients
02:52:55	24	who fall between the 25th and 75th percentile of the results.
02:53:01	25	${\mathbb Q}$ I want to focus on what happened in the US studies.

02:53:06	1	Those which concern patients with very high triglycerides.
02:53:09	2	Mr. Brooks, will you blow that up.
02:53:15	3	Do you these box plots on the right, that we've now
02:53:20	4	blown up, show that Lovaza decreased apo B compared to
02:53:25	5	placebo?
02:53:25	6	A No, counsel. What you're looking at on the Y axis is
02:53:30	7	percent change in apo B. And the mean apo B increased between
02:53:35	8	the placebo and the Lovaza treatment arm.
02:53:40	9	Q And how can you tell that?
02:53:42	10	A Because you see a line with a positive slope extending
02:53:46	11	between the mean of the two groups.
02:53:50	12	MR. ELIKAN: Your Honor, it had been my
02:53:52	13	intention that he would show where that is using his device,
02:53:58	14	which I understand is not fully functional.
02:54:00	15	Would it be okay for him to walk over to this
02:54:03	16	screen, perhaps, and show you?
02:54:06	17	THE COURT: Yes. I didn't realize that the
02:54:08	18	device is not functional.
02:54:11	19	THE CLERK: As soon as they turn it on, it turns
02:54:14	20	off the television.
02:54:15	21	THE COURT: All right.
02:54:16	22	Dr. Toth, would you like to show us on
02:54:20	23	THE WITNESS: Sure. Of course.
02:54:23	24	MR. ELIKAN: Could I turn the screen slightly so
02:54:26	25	that unless Your Honor can already see. Whatever you'd

02:54:28	1	prefer.
02:54:29	2	THE COURT: I can see. And if anyone in the
02:54:31	3	courtroom would like to see and they need to move from where
02:54:34	4	they're seated, then they should feel free to do so.
02:54:38	5	THE WITNESS: Can you see?
02:54:38	6	THE COURT: Miss Clerk, is going to give you the
02:54:40	7	handheld microphone.
02:54:43	8	THE WITNESS: Can you see?
02:54:44	9	THE COURT: Yes.
02:54:45	10	THE WITNESS: Okay.
02:54:47	11	So what is happening here is you're looking at
02:54:48	12	percent change in apoprotein B. And you see that the mean
02:54:53	13	value of apoprotein B increased in the Lovaza treated group.
02:54:53	14	BY MR. ELIKAN:
02:55:00	15	Q And can you point out the line that you mentioned with
02:55:03	16	the slope?
02:55:03	17	THE WITNESS: It's right here (indicating).
02:55:04	18	THE COURT: I'm sorry. Let me move over.
02:55:07	19	Could you show that again.
02:55:08	20	MR. ELIKAN: Could you maybe
02:55:09	21	THE WITNESS: It's this line
02:55:11	22	MR. ELIKAN: Dr. Toth, if you'd step over the
02:55:14	23	other side.
02:55:15	24	THE COURT: I think I'm just not able to see
02:55:16	25	because you were blocking the view.

02:55:17	1	THE WITNESS: Yeah. This line (indicating).
02:55:19	2	It's upward sloping.
02:55:20	3	THE COURT: Thank you. That's what I thought.
02:55:22	4	Thank you.
02:55:22	5	BY MR. ELIKAN:
02:55:40	6	${\mathbb Q}$ So, am I correct in understanding then that the K85 arm,
02:55:46	7	Lovaza, there's a reduction in apo B?
02:55:50	8	A No. It's an increase. Apo B increased.
02:55:54	9	Q I'm sorry.
02:55:56	10	Dr. Toth, in which arm did it increase?
02:55:59	11	A In the K85.
02:56:00	12	Q Okay. K85 is the
02:56:03	13	A Lovaza.
02:56:04	14	Q Okay. And in your opinion, is this difference between
02:56:25	15	Lovaza and Vascepa one of degree or one of kind?
02:56:29	16	A One of kind.
02:56:30	17	Q And why does apo B matter?
02:56:33	18	A Because it, too, is a predictor of cardiovascular risk.
02:56:40	19	Q Why? What does it indicate?
02:56:43	20	A It represents the total burden of what we call
02:56:47	21	atherogenic lipoprotein in serum.
02:56:52	22	${\mathbb Q}$ Do you recall that Dr. Heinecke testified that the
02:56:57	23	Vascepa results would have been expected over Kurabayashi and
02:57:05	24	Grimsgaard, which administered EPA to patients with mean
02:57:09	25	triglyceride levels below 150.

02:57:12	1	Do you recall that testimony?
02:57:13	2	A I do.
02:57:13	3	Q Do you agree with him that a person of ordinary skill in
02:57:19	4	the art would have looked to those studies in forming an
02:57:21	5	expectation of about the effect of EPA in persons with very
02:57:27	6	high triglycerides?
02:57:28	7	A They could not possibly have done that.
02:57:32	8	Q Would they have looked, instead, to approved treatments?
02:57:36	9	A Sure.
02:57:37	10	Q Like that?
02:57:39	11	A Yes.
02:57:44	12	Q Does I want to turn now to the REDUCE-IT trial.
02:57:52	13	In your opinion, do the findings of REDUCE-IT give
02:57:56	14	rise to additional objective indicia of non-obviousness?
02:58:00	15	A Oh my, yes.
02:58:02	16	MR. ELIKAN: Okay. Can we have slide PDX 6-28.
02:58:02	17	BY MR. ELIKAN:
02:58:09	18	Q In your view, was there a long-felt need for a
02:58:12	19	triglyceride- lowering agent that could lower residual
02:58:16	20	cardiovascular risk beyond the reduction and risk provided by
02:58:20	21	statins?
02:58:21	22	A Absolutely.
02:58:22	23	Q And why is that?
02:58:26	24	A Because we know from studies from around the world that
02:58:31	25	elevated triglycerides increase risk for cardiovascular

02:58:34	1	events. We also know from some post-hoc analyses from
02:58:40	2	prospective randomized trials but let's take the example of
02:58:44	3	the PROVE-IT trial, that even if a patient is aggressively
02:58:47	4	treated with a statin, if their triglyceride is still high,
02:58:51	5	their risk is substantially higher than a patient who is
02:58:54	6	treated with a statin, but their triglyceride is normal.
02:58:57	7	Q So would you still want to get the risk down a good bit
02:59:01	8	lower?
02:59:01	9	A Oh, yes. Always.
02:59:02	10	Q As of March 2008, had the prior art recognized that
02:59:06	11	patients with elevated triglycerides were at increased risk of
02:59:11	12	cardiovascular disease?
02:59:13	13	A Yes.
02:59:14	14	MR. ELIKAN: Can we have PX 846.
02:59:17	15	And, Your Honor, this is a 1998 article by
02:59:20	16	Austin and co-authors, "Hypertriglyceridemia as a
02:59:26	17	Cardiovascular Risk Factor." It's been pre-admitted. And the
02:59:29	18	parties have stipulated to it as prior art in paragraph 79.
02:59:35	19	THE COURT: Thank you.
02:59:35	20	BY MR. ELIKAN:
02:59:37	21	Q Looking at the first sentence of the body of the article,
02:59:42	22	in the left-hand column on page 1, what does this report about
02:59:46	23	the relationship between elevated triglycerides and the risk
02:59:51	24	of cardiovascular disease?
02:59:53	25	A The paper notes elevated levels of plasma triglyceride

02:59:58	1	have long been associated with an increased risk of
03:00:01	2	cardiovascular disease.
03:00:03	3	Q So even in 1998, it was long it had long been
03:00:07	4	associated with an elevated risk of cardiovascular disease?
03:00:10	5	A Yeah. This would go back into the '60s. Yes.
03:00:14	6	Q As of March 2008, for how long had researchers been
03:00:21	7	studying whether triglyceride-lowering agents could lower
03:00:24	8	cardiovascular risk?
03:00:25	9	A At least 30 years.
03:00:30	10	Q To 1978?
03:00:32	11	A Sure.
03:00:37	12	Q In your opinion, why had the question of whether
03:00:40	13	triglyceride-lowering agents could lower cardiovascular risk
03:00:44	14	been studied for so long?
03:00:46	15	A Because people were unable to demonstrate reductions in
03:00:52	16	risk against a statin background, with drugs that impact
03:00:58	17	triglycerides.
03:00:58	18	Q And they still would have been interested in getting
03:01:01	19	cardiovascular risk lower?
03:01:03	20	A Oh, they were desperate for a solution. Yes.
03:01:07	21	Q Prior to REDUCE-IT, had any triglyceride-lowering agent
03:01:13	22	been demonstrated to substantially reduce cardiovascular risk
03:01:18	23	over and above statin therapy?
03:01:21	24	A No.
03:01:21	25	Q Let's talk about some of the cardiovascular studies that

had been done with different types of triglyceride-lowering 1 03:01:25 2 agents before REDUCE-IT. I want to start with fibrates. 03:01:28 03:01:33 3 Prior to REDUCE-IT, had researchers studied whether fenofibrate reduced residual risk over and above statin 03:01:38 4 03:01:42 5 therapy? 6 Α Yes. 03:01:43 7 Q And with what results? 03:01:43 03:01:46 8 Α This was in the ACCORD trial, looking at patients with 9 diabetes. And patients were on a statin background with 03:01:49 03:01:56 10 Simvastatin. And half the group received fenofibrate. The 11 other group received placebo. And they were unable to 03:01:59 12 demonstrate incremental benefit with the addition of 03:02:02 03:02:06 13 fenofibrate on top of the statin. 03:02:08 14 And before REDUCE-IT, had anyone studied whether 03:02:11 15 fenofibrate reduced cardiovascular risk in patients who 03:02:15 16 weren't on a statin therapy? 03:02:17 17 Α Yes. 03:02:18 18 What trial? 03:02:19 19 That was the FIELD trial. And in the FIELD trial, once Α 03:02:24 20 again, diabetics were treated with fenofibrate versus placebo. 21 And the FIELD trial failed to meet its primary composite 03:02:29 03:02:34 22 endpoint. 03:02:34 23 I want to turn to the gemfibrozil fibrate. Q 03:02:38 24 Α Yes. 03:02:38 25 Prior to REDUCE-IT had researchers studied whether Q

1 03:02:43 2 03:02:49 03:02:50 3 Α 03:02:53 4 0 03:02:55 5 6 03:03:02 7 Α 03:03:08 03:03:09 8 9 03:03:12 10 03:03:15 11 03:03:18 12 03:03:21 03:03:22 13 03:03:25 14 03:03:29 15 16 03:03:35 03:03:40 17 03:03:45 18 03:03:49 19 03:03:52 20 21 03:03:55 03:03:59 2.2 03:04:03 23 03:04:08 24

03:04:12 25

gemfibrozil would reduce residual cardiovascular risk over and above statin therapy?

- No, because it was deemed to be too unsafe.
- Let's talk about niacin.

Before REDUCE-IT, had the question of whether niacin reduces cardiovascular risk been investigated?

- Yes.
- Did any of those trials report a cardiovascular benefit?
- They did not. There were two. One was called Aim High, which looked at patients with established cardiovascular disease. Everyone was on a statin background. They were treated with niacin.

The study was discontinued because of futility; meaning, the Data Safety Monitoring Board felt that no amount of additional time of treatment would have led to a separation in the survival curves for the study. So, was shutdown.

Then HPS2THRIVE was done in high risk patients against a statin background. And it, too, was negative for its primary composite endpoint.

And in fact, it was unable to demonstrate efficacy for any individual endpoints either. And, moreover, they found that the addition of niacin led to heightened risk for pulmonary and urinary tract infections, as well as increased risk for gastrointestinal hemorrhage.

Do you recall that earlier we looked at an editorial by Q

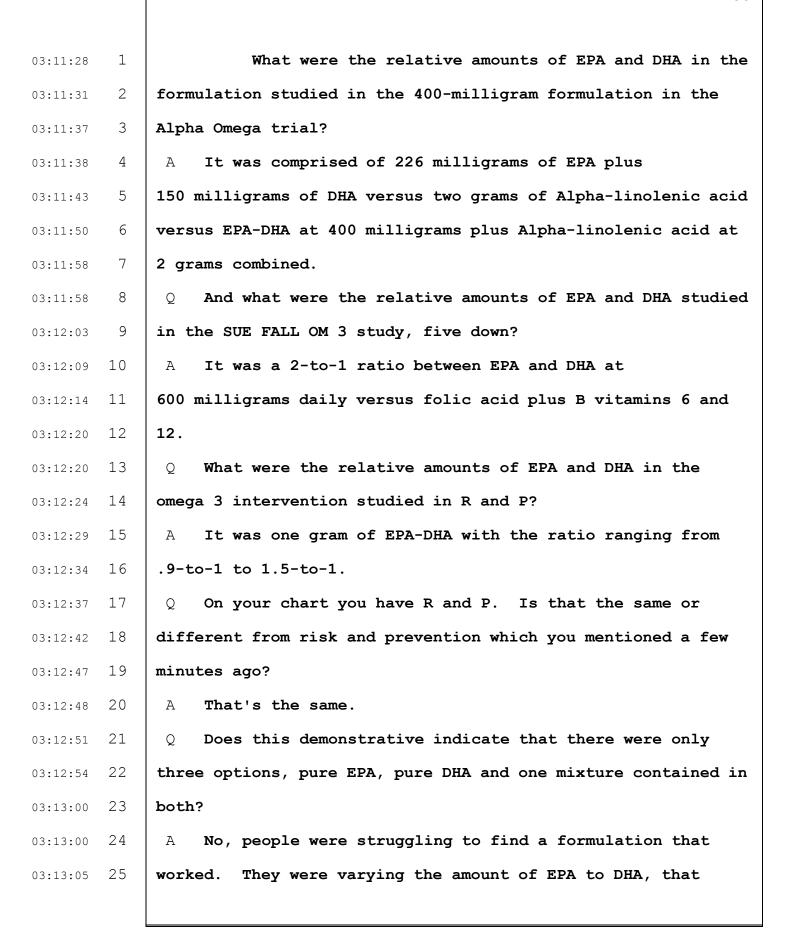
03:04:16	1	Dr. Kastelein?
03:04:17	2	A Yes.
03:04:18	3	Q That referenced a "parade of failed cardiovascular
03:04:22	4	outcome trials of fish oils" before REDUCE-IT with omega-3
03:04:22	5	fatty acids"?
03:04:25	6	A Yes.
03:04:26	7	Q I want to turn now to that parade.
03:04:28	8	Can you turn to PX 936, either in your binder or on
03:04:33	9	the screen?
03:04:33	10	A Yes.
03:04:34	11	Q What is it?
03:04:34	12	A This the final report of the OMEGA trial, which was a
03:04:41	13	randomized placebo-controlled trial to test the effect of
03:04:43	14	highly purified omega-3 fatty acids on top of modern guideline
03:04:47	15	adjusted therapy after myocardial infarction, or heart attack.
03:04:52	16	And it was published in the journal Circulation.
03:04:56	17	Q Okay. Can you identify PX 961.
03:05:00	18	A This is the results of the ASCEND trial, published in the
03:05:08	19	New England Journal of Medicine, entitled "Effects of omega-3
03:05:13	20	Fatty Acid Supplements in Diabetes Mellitus."
03:05:15	21	MR. ELIKAN: And can we have PX 948.
03:05:15	22	BY MR. ELIKAN:
03:05:18	23	$\mathbb Q$ I'm going to ask you to identify that as well, Dr. Toth.
03:05:21	24	A This is the report of the ORIGIN trial, published in the
03:05:25	25	New England Journal of Medicine. Omega-3 Fatty Acids and

03:05:29	1	Cardiovascular Outcomes in Patients with dysglycemia.
03:05:34	2	Q PX 949, could you identify that please, Dr. Toth.
03:05:40	3	A This is the report of the Risk and Prevention Study. And
03:05:45	4	this, too, was published in the New England Journal of
03:05:49	5	Medicine. And it's entitled, "Omega-3 Fatty Acids in Patients
03:05:52	6	With Multiple Cardiovascular Risk Factors."
03:05:55	7	Q Can you identify PX 492.
03:06:02	8	A This is another report entitled, "Omega-3 Fatty Acids and
03:06:11	9	Cardiovascular Events After Myocardial Infarction," which is
03:06:15	10	the report of the Alpha Omega trial.
03:06:18	11	Q Published where?
03:06:19	12	A In the New England Journal of Medicine.
03:06:22	13	Q PX 956, what is that?
03:06:27	14	A This is the results paper of the Su.Fol.Om3 trial,
03:06:34	15	published in the International Journal of Cardiology in 2013.
03:06:38	16	And its title is, "Cardiovascular Effects of B Vitamins and/or
03:06:43	17	omega-3 Fatty Acids."
03:06:46	18	MR. ELIKAN: Can we turn to PX 938.
03:06:46	19	BY MR. ELIKAN:
03:06:47	20	Q What is that?
03:06:48	21	A This is the DO-IT trial, "A Randomized Clinical Trial on
03:06:56	22	Omega-3 Polyunsaturated Fatty Acids Supplementation and
03:06:59	23	All-Cause Mortality in Elderly Men At High Cardiovascular
03:07:05	24	Risk."
03:07:05	25	And I if we could scroll up, it was excuse me

03:07:10	1	down. Sorry. It was published in the European Journal of
03:07:16	2	Cardiovascular Prevention and Rehabilitation in 2010.
03:07:20	3	MR. ELIKAN: Can we turn to PX 930.
03:07:20	4	BY MR. ELIKAN:
03:07:27	5	Q What is this?
03:07:28	6	A This is the results of the AREDS2, or age-related eye
03:07:37	7	disease study. It was published in the Journal of the
03:07:41	8	American Medical Association. And it's entitled, "Effects of
03:07:44	9	Long-Chain Omega-3 Fatty Acids and Lutein and Zeaxanthin
03:07:47	10	Supplements on Cardiovascular Outcomes."
03:07:50	11	Q Do all of these publications describe trials on omega-3
03:07:54	12	fatty acids that were underway as of March 2008?
03:07:58	13	A Yes.
03:07:58	14	Q And is that reflected in information in these
03:08:01	15	publications about the study design, and the timing of patient
03:08:05	16	enrollment?
03:08:06	17	A Yes.
03:08:07	18	Q Did you consider all of these publications in your work
03:08:09	19	in this case?
03:08:10	20	A Yes.
03:08:12	21	MR. ELIKAN: Your Honor, we move to admit PX
03:08:15	22	936, 961, 948, 949, 492, 956, 938 and 930.
03:08:29	23	MR. KLEIN: No objections.
03:08:29	24	BY MR. ELIKAN:
03:08:31	25	Q Have you prepared a summary slide with pertinent

03:08:34	1	information from each of these documents?
03:08:37	2	A Yes. We have a summary slide.
03:08:40	3	MR. ELIKAN: Can we have PDX 639, please.
03:08:44	4	THE CLERK: Your Honor, have you ruled
03:08:46	5	evidentiary on the admission of these?
03:08:47	6	THE COURT: The motion is granted since there's
03:08:49	7	no objection.
03:08:49	8	THE CLERK: Thank you.
03:08:15	9	(Plaintiffs' Exhibits 936, 961, 948, 949,
03:08:21		492, 956, 938 and 930 received in
03:08:21	10	evidence.)
03:08:21	11	BY MR. ELIKAN:
03:08:54	12	${\mathbb Q}$ By referring to the titles at the top of each column can
03:08:57	13	you explain what information you have on this slide in each
03:09:02	14	column.
03:09:03	15	A Yes. We have eight prospective randomized clinical
03:09:10	16	trials involving various formulations of EPA and DHA.
03:09:14	17	Q And you're looking OM3 study publication column?
03:09:18	18	A Yes the acronym appears with the date the year of
03:09:23	19	publication.
03:09:24	20	In the second column is the date of initiation of
03:09:28	21	trial, and these varied from 1997 to 2006.
03:09:32	22	Then you have the omega-3 formulation studied in
03:09:36	23	terms of dose and the variation in the ratio of EPA, DHA study
03:09:42	24	to study to study.
03:09:44	25	You see in the fourth column primary endpoint, none
		<b>1</b>

03:09:47	1	the trials were able to achieve statistical significance for
03:09:52	2	their primary composite endpoint.
03:09:55	3	Then in the final column in the most rightward
03:09:58	4	column is percentage of patients on statins.
03:10:10	5	$\cite{Mow}$ Now, the demonstrative identifies the omega-3
03:10:14	6	formulations studied in these different outcome trials right?
03:10:19	7	A Yes.
03:10:20	8	Q In general terms what did these treatments consist of
03:10:23	9	this terms of composition and dose. Are they all EPA and DHA
03:10:28	10	or are there also other things in there?
03:10:30	11	A There are. Every one of these studies used a different
03:10:34	12	dose and formulation. So the dose is very anywhere from
03:10:38	13	400 milligrams to 2.4 grams. But you'll also notice
03:10:42	14	significant variability in the ratio of EPA to DHA.
03:10:47	15	Q We'll get to that in a moment. You had mentioned another
03:10:52	16	omega-3 fatty acid about hour ago, an hour-and-a-half ago.
03:10:55	17	A Yes.
03:10:55	18	${\mathbb Q}$ Might have been a little bit less. Is that listed here.
03:11:00	19	A Yes, ALA which is Alpha-linolenic acid.
03:11:06	20	${\mathbb Q}$ And aside from that one formulation do the others all
03:11:10	21	have substantial amounts of both EPA and DHA?
03:11:15	22	A Yes. Variably so, but, yes.
03:11:18	23	${\mathbb Q}$ I want to look at some of these examples of the
03:11:20	24	formulations that were in these studies underway as of March
03:11:25	25	2008.



03:13:10	1	ratio. They were varying the total dosage daily. People were
03:13:15	2	trying to find their way in the dark.
03:13:17	3	Q To find a better cardiovascular risk reducing agent?
03:13:22	4	A Yes.
03:13:24	5	MR. ELIKAN: Your Honor, we move for admission
03:13:29	6	of PDX 6-29 under Federal Rule of Evidence 10006.
03:13:31	7	MR. KLEIN: No objection.
03:13:32	8	THE COURT: PDX 6-29 is admitted.
03:13:32	9	(Plaintiffs' Exhibit 6-29 received in
03:13:32 03:13:32	10	evidence.) BY MR. ELIKAN:
03:13:38	11	Q Now, each of these results were published after March of
03:13:42	12	2008, right?
03:13:43	13	A Yes.
03:13:45	14	Q Did literature published before March of 2008 assess the
03:13:50	15	question of whether omega-3 fatty acids demonstrate
03:13:55	16	cardiovascular benefits?
03:13:56	17	A Yes.
03:13:57	18	MR. ELIKAN: Can we turn to PX 848.
03:14:02	19	And, Your Honor, this has been pre-admitted.
03:14:05	20	It's an article by Dr. Hooper and others, "Risks and Benefits
03:14:09	21	of Omega-3 Fats For Mortality, Cardiovascular Disease and
03:14:15	22	Cancer, Systematic Review," and the parties have stipulated
03:14:19	23	that it's prior art. It's in paragraph 80.
03:14:23	24	THE COURT: Thank you.
03:14:25	25	MR. ELIKAN: Can we pull up in the top of the

03:14:28	1	page and blow it up.
03:14:28	2	BY MR. ELIKAN:
03:14:31	3	Q When was this article published?
03:14:34	4	A This article was published in the British Medical Journal
03:14:39	5	in March of 2006.
03:14:40	6	Q So that's just two years before the priority date?
03:14:44	7	A Yes.
03:14:44	8	Q And very briefly and in general terms what did this
03:14:47	9	publication concern?
03:14:49	10	A This is "A Systematic Review on the Risks and Benefits of
03:14:56	11	Omega-3 Fats For Mortality, Cardiovascular Disease, and
03:15:00	12	Cancer."
03:15:00	13	Q Are you reading from the objective field?
03:15:05	14	A I read from the title. But I can read from the objective
03:15:08	15	field.
03:15:08	16	Q What did the authors state is their objective?
03:15:12	17	A "To review systematically the evidence for an
03:15:14	18	effect of long chain and shorter chain omega-3 fatty
03:15:18	19	acids on total mortality, cardiovascular events, and
03:15:22	20	cancer."
03:15:22	21	MR. ELIKAN: Can we turn to the results section
03:15:25	22	in the left-hand column of the first page and highlight the
03:15:29	23	first sentence.
03:15:29	24	BY MR. ELIKAN:
03:15:31	25	${\mathbb Q}$ How many studies did the authors say they reviewed for

1 | their analysis?

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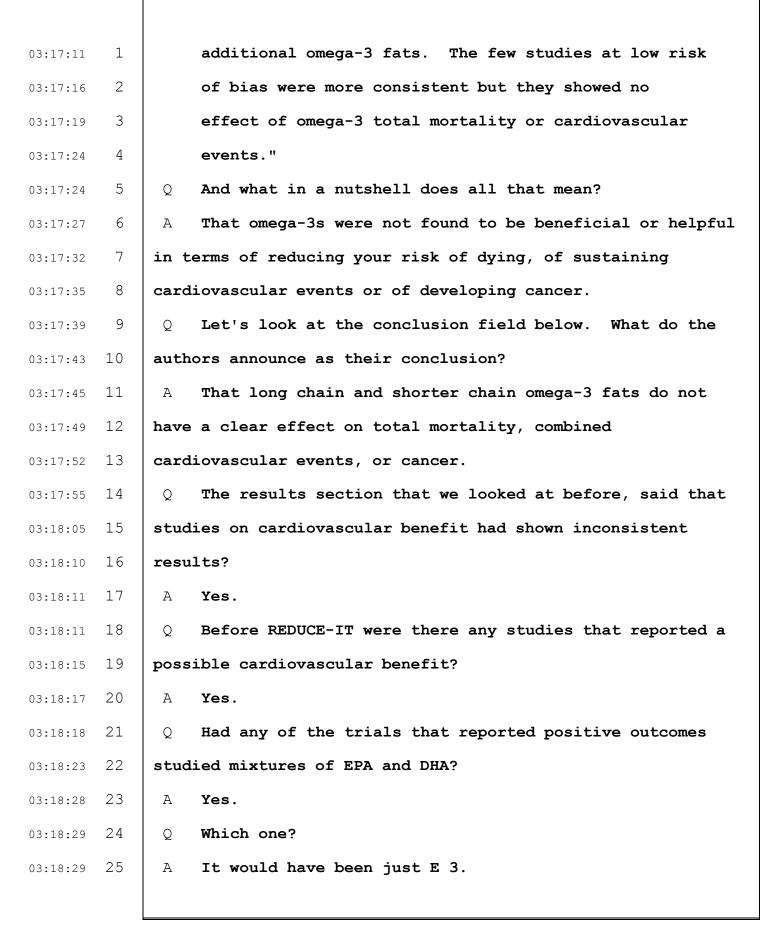
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A Well, they did a comprehensive literature search and identified 15,159 potential studies to include. But based on their inclusion criteria, they whittled it down to 48 randomized controlled trials including, 36,913 persons and 41 cohort studies.

- Q What's a cohort study?
- A cohort study is a study like the Framingham study in Massachusetts where you identify a group of people and then you follow them out over time and you investigate various issues relevant to health and see how certain features, demographic features, physiologic features et cetera impact risk for specific diseases.
- Q And how far back in time did some of these 89 trials go?
- A To 1966.
- Q In the second sentence of this results paragraph, what did the authors report about the findings of these trials?
- A That they were inconsistent.
- Q And then in the following three sentences, what overall observation did the authors draw about the trials on the whole?
- A They say,

"The pooled estimate showed no strong
evidence of reduced risk of total mortality or
combined cardiovascular events in participants taking



03:18:33	1	Q And did those cardiovascular outcome trials that did
03:18:36	2	report in reductions in cardiovascular events lead the medical
03:18:40	3	community generally to conclude that omega-3 fatty acids were
03:18:45	4	in fact effective to reduce cardiovascular risk?
03:18:49	5	A It did not induce a shift in practice, no.
03:18:53	6	Q Do you recall that Dr. Heinecke testified that in light
03:18:59	7	of JELIS, there was no unmet need for triglyceride lowering
03:19:03	8	agent that reduced cardiovascular risk?
03:19:05	9	A Do I agree with that?
03:19:07	10	Q No, I'm asking whether you recall that?
03:19:10	11	A Yes, I do.
03:19:10	12	Q Was the JELIS study widely embraced by the medical
03:19:15	13	community as establishing that Epadel was effective to reduce
03:19:21	14	cardiovascular events either alone or on top of statin
03:19:25	15	therapy?
03:19:25	16	A No, and it did not get approved for that indication here
03:19:29	17	in the United States based on JELIS.
03:19:31	18	Q Let's discuss JELIS. Very briefly what did JELIS study?
03:19:36	19	A JELIS studied Japanese patients who some did not have
03:19:42	20	established cardiovascular disease, they were primary
03:19:46	21	prevention and then there were patients who had established
03:19:49	22	cardiovascular disease and they were in the secondary
03:19:52	23	prevention group.
03:19:54	24	The patients were on very low doses of statins and
03:19:58	25	they were randomized to receive either EPA or placebo and then

03:20:05	1	followed for just under five years.
03:20:07	2	Q Let's turn to DX 1553. And this is the 2007 Yokoyama
03:20:18	3	article which has been pre-admitted.
03:20:21	4	Looking at the tile what the patient group that was
03:20:24	5	studied?
03:20:25	6	A What was the patient group that was studied?
03:20:27	7	Q What type of patients?
03:20:29	8	A As I said both primary and secondary prevention.
03:20:33	9	Q I'm looking at the title I see a long word
03:20:36	10	hypercholesterolemic.
03:20:39	11	A I see. I see what you mean.
03:20:40	12	Q What are hypercholesterolemic patients?
03:20:45	13	A I'm sorry, counsel. Hypercholesterolemic patients have
03:20:45	14	high levels of cholesterol and typically high LDL.
03:20:51	15	Q Now, could we pull up the methods paragraph.
03:20:54	16	A Yes.
03:20:54	17	${\mathbb Q}$ And I want to highlight the second sentence.
03:20:57	18	What did Yokoyama state about what pharmaceutical
03:21:01	19	treatments the patients received?
03:21:03	20	A They were randomly assigned to receive either 1.8 grams
03:21:08	21	of EPA daily with a statin or a statin only. And they were
03:21:12	22	about evenly divided at 9300 patients per group with just
03:21:17	23	under a five-year follow up.
03:21:19	24	Q I want to go to page 3 and zoom in on Table 1. Do you
03:21:23	25	see the table reports mean serum lipid values including

03:21:28	1	triglyceride levels for the population studied?
03:21:31	2	A Yes.
03:21:31	3	Q And are these reported in millimoles per liter?
03:21:37	4	A Well, the <i>Lancet</i> is a British journal so it's in
03:21:42	5	millimoles per liter.
03:21:43	6	Q Do you have a slide that converts the millimoles per
03:21:47	7	liter reported in Yokoyama into the milligrams per deciliter
03:21:52	8	unit of measurement we've been discussing?
03:21:52	9	A Yes, counsel.
03:21:53	10	MR. ELIKAN: Can we have PDX 630.
03:21:53	11	BY MR. ELIKAN:
03:21:57	12	Q So converted to milligrams per deciliter, what was the
03:22:01	13	mean triglyceride level of the population administered EPA in
03:22:06	14	JELIS?
03:22:06	15	A 153 milligrams per deciliter.
03:22:13	16	Q Was this a study population with severe
03:22:17	17	hypertriglyceridemia?
03:22:17	18	A No.
03:22:18	19	Q How would you characterize the mean level of 153?
03:22:25	20	A A mean level of 153 is just over normal. ATP III defined
03:22:30	21	normal as less than or equal to 150.
03:22:34	22	Q Converted from millimoles to milligrams per deciliter,
03:22:37	23	what were the baseline LDL-C levels of patients receiving EPA
03:22:46	24	in JELIS?
03:22:46	25	A It was remarkably high at 181 milligrams per deciliter.

03:22:50	1	${\mathbb Q}$ I want to look the summary section on page 1. In the
03:22:56	2	first sentence of the paragraph labeled findings, what result
03:23:01	3	did Yokoyama report with respect to the primary endpoint?
03:23:06	4	A A 19 percent relative reduction of major coronary events.
03:23:10	5	Q Have you reviewed subsequent publications that indicate
03:23:14	6	that the JELIS trial did not establish that EPA reduced
03:23:18	7	cardiovascular risk?
03:23:19	8	A Yes.
03:23:20	9	Q Let's turn to PX 953. Can you identify that?
03:23:25	10	A Yes. This is a Cochrane analysis of the impact of
03:23:33	11	omega-3 fatty acids for the primary and secondary prevention
03:23:36	12	of cardiovascular disease.
03:23:39	13	Q What's Cochrane?
03:23:40	14	A Well, that is a very, very respected group of
03:23:46	15	investigators in England who perform meta analyses on a broad
03:23:53	16	range of health related issues.
03:23:54	17	Q Is this a meta analysis?
03:23:57	18	A This is.
03:24:00	19	Q And did you review it in this case?
03:24:03	20	A Yes counsel.
03:24:04	21	MR. ELIKAN: We move for admission PX 953.
03:24:07	22	MR. KLEIN: To objection.
03:24:08	23	THE COURT: 953 is admitted.
03:24:08	24	(Plaintiffs' Exhibit 953 received in evidence.)
03:24:08	25	

## BY MR. ELIKAN: 1 03:24:08 2 Please turn to page 66. I want to look at the right-hand 03:24:12 3 column and the section implications for practice. 03:24:15 In the first sentence of the third paragraph, what 03:24:20 4 do the authors of the publication generally conclude about the 5 03:24:24 6 efficacy of omega-3 fats for preventing or treating 03:24:29 7 cardiovascular disease? 03:24:34 03:24:35 8 "That supplemental long chain omega-3 fats are probably 9 not useful for preventing or treating cardiovascular disease 03:24:41 although long chain omega-3 fats can help to reduce serum 10 03:24:44 11 triglycerides and raise HDL a little." 03:24:48 12 This talks about omega-3 fats. Is that the same thing as 03:24:52 03:24:56 13 the omega-3 fatty acids we've been discussing? 14 Α Yes. 03:24:59 03:25:02 15 Did the authors of this publication qualify their 16 statement and say they believed high purity EPA was an 03:25:06 03:25:10 17 exception to the overall assessment of probably not useful? 03:25:14 18 They don't. Α 03:25:15 19 Let's turn to page 33 and I want to MR. ELIKAN: 03:25:19 20 look in the left hand column. Can we highlight the third 21 sentence. 03:25:23 03:25:23 22 BY MR. ELIKAN: 03:25:26 23 What does this indicate about whether the meta-analysis 03:25:29 24 included the JELIS trial?

Well, it shows that it included the JELIS trial.

03:25:32 25

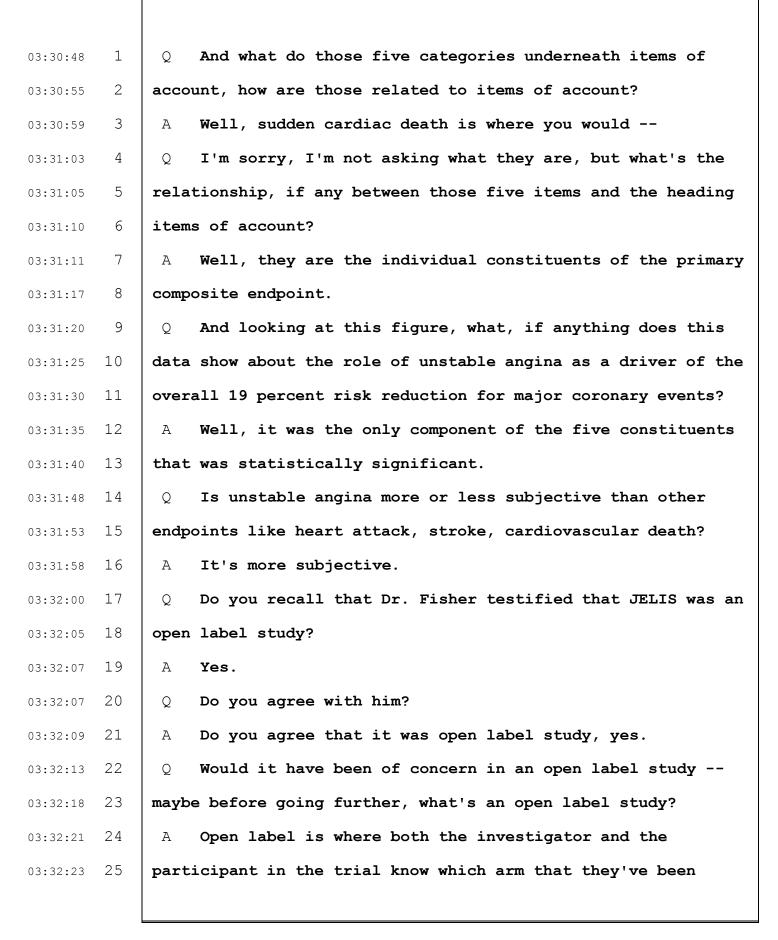
Α

03:25:37	1	Q Did the included studies here, do they include REDUCE-IT?
03:25:43	2	A No.
03:25:43	3	Q Was the meta-analysis that we're looking at published
03:25:48	4	before or after the REDUCE-IT results were announced?
03:25:52	5	A Before.
03:25:53	6	MR. ELIKAN: Let's turn to PX 954.
03:25:53	7	BY MR. ELIKAN:
03:26:02	8	Q What is this?
03:26:03	9	A This is another meta-analysis by Aung and co workers
03:26:11	10	published in the fall of 2018 in JAMA cardiology and it's
03:26:11	11	entitled, "Associations of Omega-3 Fatty Acid Supplement Use
03:26:12	12	With Cardiovascular Disease Risks Meta-Analysis of 10 Trials
03:26:17	13	Involving 77,917 Individuals."
03:26:21	14	MR. ELIKAN: We move for admission of PX 954.
03:26:24	15	MR. KLEIN: No objection.
03:26:25	16	THE COURT: 954 is admitted.
03:26:25	17	(Plaintiffs' Exhibit 954 received in
03:26:25 03:26:29	18	evidence.) MR. ELIKAN: Can we have the conclusions and
03:26:31	19	relevance paragraph from page 1 on the screen.
03:26:31	20	BY MR. ELIKAN:
03:26:37	21	Q What did the authors report in their conclusions and
03:26:40	22	relevance section?
03:26:42	23	A They conclude,
03:26:43	24	"This meta-analysis demonstrated that omega-3
03:26:47	25	fatty acids had no significant association with fatal

03:26:49	1	or nonfatal coronary heart disease or any major
03:26:54	2	vascular events. It provides no support for current
03:26:58	3	recommendations for the use of such supplements in
03:27:01	4	people with a history of coronary heart disease."
03:27:05	5	${\mathbb Q}$ Did the authors somewhere qualify this statement and say
03:27:10	6	they believed EPA was effective in preventing or treating
03:27:15	7	cardiovascular disease?
03:27:17	8	A No, counsel.
03:27:18	9	MR. ELIKAN: Let's go to page 3. And I want to
03:27:20	10	pull up the table titled Characteristics of Included Trials.
03:27:20	11	BY MR. ELIKAN:
03:27:27	12	${\mathbb Q}$ And looking at this list, does it include the JELIS
03:27:30	13	trial?
03:27:30	14	A It does.
03:27:39	15	${\mathbb Q}$ Did the Yokoyama paper identify how the primary endpoint
03:27:44	16	was defined?
03:27:45	17	A Yes.
03:27:46	18	MR. ELIKAN: Let's go back to DX 1553, and I
03:27:51	19	want to pull up the second to last paragraph in the left-hand
03:27:54	20	column on the second page.
03:27:54	21	BY MR. ELIKAN:
03:27:59	22	Q How did the JELIS trial define the primary endpoint?
03:28:02	23	A The primary endpoint was,
03:28:04	24	"Any major coronary event including sudden
03:28:07	25	cardiac death, fatal and nonfatal myocardial

03:28:12	1	infarction and other nonfatal events including
03:28:14	2	unstable angina pectoris, angioplasty, stenting, or
03:28:21	3	coronary artery bypass grafting."
03:28:24	4	Q Does the data in Yokoyama indicate that the overall
03:28:28	5	19 percent risk reduction was driven by any particular
03:28:32	6	component of the primary endpoint?
03:28:34	7	A Yes.
03:28:34	8	Q Which one?
03:28:35	9	A Unstable angina pectoris.
03:28:39	10	MR. ELIKAN: Let's look at that. Can we have
03:28:42	11	Figure 3 on page 5.
03:28:42	12	BY MR. ELIKAN:
03:28:43	13	Q What's represented in Figure 3, generally?
03:28:46	14	A Figure 3, like we saw with the REDUCE-IT trial, is
03:28:51	15	showing you graphically how individual endpoints, including
03:28:58	16	the primary composite endpoint fared in terms of statistical
03:28:58	17	significance.
03:29:05	18	They're showing you the number of events in both the
03:29:07	19	control and EPA group. The P value for significance, the
03:29:11	20	hazard ratio and then the graph shows you how wide the
03:29:16	21	confidence intervals are and where the individual endpoint
03:29:21	22	wound up relative to unity.
03:29:24	23	Q And what do you mean by unity?
03:29:26	24	A Okay. That's the vertical line. That's the number 1.
03:29:33	25	If a point falls right on 1, it means it was neither harmful

1 nor beneficial. 03:29:38 2 If it's to the left of that vertical line, it 03:29:38 3 implies something that is beneficial as long as the horizontal 03:29:42 line doesn't cross 1, and then if it's to the right of unity 03:29:48 4 that means it's harmful. 5 03:29:52 6 Do you see at the top there's reference to major coronary 03:29:54 7 events? 03:29:58 03:29:58 8 Α I do. 9 Was that the primary endpoint? 03:29:58 10 Α Yes. 03:30:01 11 And to the right of that listing, for major coronary 03:30:01 Q 12 events, what information is displayed here? 03:30:06 03:30:08 13 Α You see the number of people who sustained a major 03:30:12 14 coronary event on the EPA treatment arm which is 262. 03:30:16 15 number who sustained an event in the control arm, which was placebo, at 324. The P value of .01 which is significant and 16 03:30:21 03:30:28 17 then the hazard ratio of .81. 03:30:31 18 And what does that mean in terms of relative risk reduction? 03:30:33 19 That means a 19 percent relative risk reduction. 03:30:34 20 And you do you see under the label major coronary events 21 03:30:38 Q 03:30:42 22 there's a line for items of account? 03:30:44 23 Α Yes. 03:30:44 24 And then five different categories are indented? Q 03:30:48 25 Α Yes.



03:32:28 1 assigned to. It's unblinded.
03:32:30 2 Would it have been of co

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Q Would it have been of concern that in an open label study all the more objective components of the primary endpoint don't show statistically significant outcome difference while the more subjective endpoint did?

- A Yes, that's concerning.
- Q And why is that?

A Because if a study is not blinded, that does introduce bias. And unstable angina is the most subjective because you don't have a lot of objective features, objective measures to tell you, oh, this patient has unstable angina. They may come in with chest pain but the chest pain isn't necessarily attributable to heart pain or angina. It could be lots of things. And it's up to the physician evaluating the patient as to whether or not they're going to diagnose unstable angina.

But if you know that they are or are not on therapy, that could influence your decision to call it one way or the other.

- Q Would a person of ordinary skill in the art as of March 2008 reviewing the data in Yokoyama, have concluded that bias may have played a role?
- A Yes. It's been estimated that when you have an unblinded study, you can actually inflate the benefit by up to 17 percent.

I want to turn back to PX 272 -- I'm sorry, Your Honor. 03:33:58 1 2 THE COURT: I'm trying to find a good time to 03:34:02 3 break because we're past 3:30. But I don't want to interrupt 03:34:04 your flow because I know you wanted to go back to the prior 03:34:08 4 document. 03:34:11 5 6 MR. ELIKAN: Your Honor, I'm happy to stop now, 03:34:14 7 if that's your preference. I'm going to otherwise be going 03:34:16 03:34:20 8 for a good bit before I'm finished with this piece. 9 THE COURT: Then why don't take a break for 03:34:23 today. I have a lot of people waiting for me, and I don't 10 03:34:26 11 want keep them waiting. 03:34:28 12 I do have one curiosity question. And I realize 03:34:30 03:34:33 13 that this is not -- that it may not be relevant and it doesn't 14 appear to be in dispute because none of the experts have 03:34:37 15 pointed this out but I've heard extensive testimony about 03:34:41 16 available therapy before Vascepa including niacin, and one of 03:34:45 03:34:51 17 the adverse effects of niacin is this flushing effect, but I 18 thought that that's been resolved through the no flush niacin, 03:34:55 19 but perhaps one the experts can satisfied my curiosity when we 03:34:58 20 03:35:03 resume tomorrow. That's fine or perhaps Dr. Toth 21 MR. ELIKAN: 03:35:04 03:35:07 22 could allay your curiosity right now if it's okay with you. 23 THE WITNESS: I could do it very quickly. 03:35:11 03:35:13 24 THE COURT: Yes. 03:35:13 25 THE WITNESS: The no flush niacin did not solve

03:35:16	1	that issue, it merely substituted what we call NAD or
03:35:16	2	nicotinamide adenine dinucleotide which is related to niacin,
03:35:27	3	it can be converted to niacin, but the problem is it wound up
03:35:29	4	having a lot of liver toxicity so it really never took off.
03:35:33	5	THE COURT: Thank you. That explains it.
03:35:36	6	Thank you. We'll resume tomorrow.
	7	-000-
	8	
	9	I certify that the foregoing is a correct transcript from the record of proceedings
	10	in the above-entitled matter.
	11	/s/Kathryn M. French 2/3/2020 Kathryn M. French, CCR #392, RPR
	12	Official Reporter
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